

Court File No. CV-23-00711935-00CL

**TREES CORPORATION, ONTARIO CANNABIS HOLDINGS
CORP., MIRACULO INC., 2707461 ONTARIO LTD., OCH
ONTARIO CONSULTING CORP., and 11819496 CANADA INC.**

**FIRST REPORT OF FTI CONSULTING CANADA INC., AS
MONITOR**

January 24, 2024

TABLE OF CONTENTS

	<u>Page</u>
A. INTRODUCTION	1
B. TERMS OF REFERENCE	4
C. ACTIVITIES OF THE MONITOR	5
D. REQUEST FOR APPROVAL OF THE PROPOSED SALE AND INVESTMENT SOLICITATION PROCESS AND STALKING HORSE AGREEMENT	8
E. AMENDED AND RESTATED DIP FACILITY AND INCREASE TO DIP LENDER’S CHARGE	20
F. THE SECURITY OPINIONS.....	22
G. SECURITIES ACT RELIEF	24
H. RECEIPTS AND DISBURSEMENTS FOR THE TWO-WEEK PERIOD ENDING JANUARY 12, 2024.....	25
I. REQUEST FOR AN EXTENSION OF THE STAY PERIOD.....	27
J. MOTION FOR FEE APPROVAL.....	29
K. CONCLUSION.....	30
APPENDIX A - Amended and Restated Initial Order dated January 2, 2024	
APPENDIX B - Endorsement of Chief Justice Morawetz dated January 8, 2024	
APPENDIX C - SISP	
APPENDIX D - Break Fee Chart for Stalking Horse Comparison Period	
APPENDIX E - DIP Fee Comparison Table for DIP Comparison Period	
APPENDIX F - Revised and Extended Cash Flow Projections	

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

IN THE MATTER OF THE COMPANIES' CREDITORS
ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF TREES CORPORATION, ONTARIO
CANNABIS HOLDINGS CORP., MIRACULO INC., 2707461
ONTARIO LTD., OCH ONTARIO CONSULTING CORP., and
11819496 CANADA INC.

**FIRST REPORT TO THE COURT
SUBMITTED BY FTI CONSULTING CANADA INC.,
IN ITS CAPACITY AS MONITOR**

A. INTRODUCTION

1. On December 22, 2023, Trees Corporation (“**Trees**”), Ontario Cannabis Holdings Corp. (“**OCHC**”), Miraculo Inc., 2707461 Ontario Ltd., OCH Ontario Consulting Corp. (“**OCHOCC**”), and 11819496 Canada Inc. (collectively, the “**Applicants**”) sought and obtained an initial order (the “**Initial Order**”) under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”). The proceedings commenced under the CCAA by the Applicants are referred to herein as the “**CCAA Proceedings**”.
2. The Initial Order, among other things:
 - (a) appointed Ernst & Young Inc. (“**EY**”) as monitor of the Applicants (in such capacity, the “**Former Monitor**”);
 - (b) granted a stay of proceedings in favour of the Applicants until January 2, 2024 (the “**Stay Period**”);

- (c) approved a \$60,000 debtor-in-possession credit facility (the “**DIP Facility**”) and granted a corresponding charge in respect thereof (the “**DIP Lender’s Charge**”); and
 - (d) granted the Administration Charge, the Subsequent Administration Charge and the Directors’ Charge (each as defined in the Initial Order) (collectively with the DIP Lender’s Charge, the “**Initial CCAA Charges**”).
3. The Court granted the Amended and Restated Initial Order (the “**ARIO**”) on January 2, 2024, which, among other things:
- (a) appointed FTI Consulting Canada Inc. as monitor of the Applicants (in such capacity, the “**Monitor**”);
 - (b) authorized the Applicants to pay certain pre-filing amounts owed to suppliers that they deem critical to their business;
 - (c) increased the amount of the DIP Facility to \$800,000, and increased the amount of the DIP Lender’s Charge to \$1,100,000;
 - (d) increased the amount of the Subsequent Administration Charge, decreased the amount of the Directors’ Charge, and granted the Subsequent Directors’ Charge (such charges, together with the Initial CCAA Charges, the “**CCAA Charges**”); and
 - (e) extended the Stay Period to February 29, 2024.
4. Copies of the ARIO and the related Endorsement of Chief Justice Morawetz dated January 8, 2024 (the “**Morawetz CJ Endorsement**”), are attached as **Appendices “A” and “B”**, respectively.
5. The purpose of this first report of FTI, in its capacity as the Monitor (the “**Report**”) is to provide the Court with the Monitor’s comments and recommendations regarding the following:

- (a) The activities of the Monitor since the date of its appointment under the ARIO;
- (b) The receipts and disbursements of the Applicants for the period January 2, 2024 to January 12, 2024;
- (c) The opinions of Torys LLP (“**Torys**”), counsel to the Monitor, on the validity and enforceability of certain loan and security documents held by One Plant (Retail) Corp. (the “**DIP Lender**” or “**One Plant**”) as against the personal property of: (i) Trees (the “**Trees Security**”); and (ii) OCHC and OCHOCC (the “**OCH Security**”, and together with the Trees Security, the “**Security**”), and the creation and perfection of the security interests created thereby;
- (d) The Applicants’ motion for the granting of:
 - (i) an order (the “**Second ARIO**”) amending and restating the ARIO to, among other things:
 - a. amend the DIP Lender’s name from “One Plant Retail Corp.” to “One Plant (Retail) Corp.”;
 - b. authorize and approve the Applicants’ entry into an amended and restated debtor-in-possession term sheet dated January 23, 2024 (the “**A&R DIP Term Sheet**”), which, among other things, increases the principal amount available under the DIP Facility to \$1,560,000;
 - c. increase the maximum amount of the DIP Lender’s Charge to \$1,850,000;
 - d. authorize payment by the Applicants of the professional fees and disbursements of the Former Monitor and its counsel, Torys, incurred during their involvement in these CCAA Proceedings;

- e. authorizing the Applicants to incur no further expenses in relation to any securities filings required under applicable securities law during the Stay Period without any liability to the Monitor or the directors, officers, employees or other representatives of the Applicants; and
 - f. postpone the requirement for any future annual general meeting of the shareholders of Trees during the CCAA Proceedings, and extending the time limit to call and hold such annual general meeting of shareholders until after the conclusion of the CCAA Proceedings;
- (ii) an order (the “**SISP Order**”), among other things:
- a. approving the SISP (as defined below);
 - b. authorizing the Applicants and the Monitor to immediately commence the SISP and to take any and all actions as may be necessary or desirable to implement and carry out the SISP in accordance with its terms and the SISP Order;
 - c. approving the Stalking Horse Agreement (as defined below) to be entered into between Trees and One Plant (in such capacity, the “**Stalking Horse Bidder**”) solely for the purpose of constituting the “Stalking Horse Agreement” under the SISP;
 - d. approving the Bid Protections (as defined below); and
 - e. extending the Stay Period to and including April 12, 2024.

B. TERMS OF REFERENCE

6. In preparing this Report, the Monitor has relied upon unaudited financial information of the Applicants, the Applicants’ books and records and discussions with various parties,

including senior management (“**Management**”) of, and advisors to, the Applicants, and the Former Monitor (collectively, the “**Information**”).

7. Except as otherwise described in this Report:
 - (a) The Monitor has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would comply with Generally Accepted Assurance Standards pursuant to the Chartered Professional Accountants of Canada Handbook; and
 - (b) The Monitor has not examined or reviewed financial forecasts and projections referred to in this Report in a manner that would comply with the procedures described in the Chartered Professional Accountants of Canada Handbook.
8. Future-oriented financial information reported in, or relied on, in preparing this Report is based on Management’s assumptions regarding future events. Actual results will vary from these forecasts and such variations may be material.
9. The Monitor has prepared this Report in connection with the Applicants’ motion for the issuance of the SISP Order and the Second ARIO, scheduled to be heard on January 29, 2024. The Report should not be relied on for other purposes.
10. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian Dollars. Capitalized terms not otherwise defined herein have the meanings defined in the ARIO.

C. ACTIVITIES OF THE MONITOR

NOTICES AND COMMUNICATIONS

11. The Monitor has established a website at <http://cfcanada.fticonsulting.com/treescorporation/> (the “**Monitor’s Website**”) on which updates on the CCAA Proceedings will be posted periodically, together with all the Court materials filed in the CCAA Proceedings. In addition, the Monitor has established a dedicated email address (treescorporation@fticonsulting.com) and hotlines (416-649-8043

or 1-833-705-4470) to allow stakeholders to communicate directly with the Monitor in order to address any questions or concerns in respect of the CCAA Proceedings.

12. Based on its discussions with the Former Monitor and its counsel, the Monitor understands that, pursuant to paragraph 43 of the Initial Order, the Former Monitor had, prior to the Monitor's appointment:
 - (a) arranged for the publication of a notice containing the information prescribed under the CCAA in *The Globe and Mail* (National Edition) on January 2, 2024;
 - (b) made a copy of the Initial Order and the application materials publicly available by posting them on the Former Monitor's website;
 - (c) sent, in the prescribed manner, a notice to every known creditor with a claim against the Applicants of more than \$1,000; and
 - (d) prepared a list of those creditors and the estimated amounts of those claims, and made such list publicly available on the Former Monitor's Website (the "**Known Creditor List**").

13. In light of the Former Monitor's activities described in the foregoing paragraph, the Monitor, pursuant to paragraph 47 of the ARIO:
 - (a) made a copy of the Initial Order, the ARIO, the application materials, the Former Monitor's Pre-Filing Report and the Former Monitor's First Report publicly available by posting them on the Monitor's Website on or about January 4, 2024; and
 - (b) made the Known Creditor List publicly available on the Monitor's Website.

OTHER ACTIVITIES OF THE MONITOR

14. In addition to the activities listed above, the Monitor has also undertaken the following activities since the commencement of its appointment under the ARIO:

- (a) posted an updated and current service list for these CCAA Proceedings on the Monitor's Website;
- (b) engaged in discussions with the Former Monitor to ensure a smooth and uninterrupted transition of the monitor role from the Former Monitor to the Monitor;
- (c) engaged in discussions with the Applicants, its legal counsel, and its directors and Management regarding issues related to the Applicants' operations and borrowings under the DIP Facility;
- (d) participated in discussions with One Plant and its advisors regarding matters related to the DIP Facility, including in respect of the A&R DIP Term Sheet;
- (e) participated in discussions with and assisted the Applicants in discussions with certain landlords, suppliers, other creditors and employees related to the CCAA Proceedings and responded to requests for information from certain such parties;
- (f) engaged in discussions with the Applicants, their legal counsel, One Plant and its legal counsel regarding the SISP and One Plant's participation in same as the Stalking Horse Bidder;
- (g) engaged with the Monitor's legal counsel, Torys, regarding matters related to the CCAA Proceedings, including regarding Torys' opinion on the Security; and
- (h) in connection with the SISP, engaged with the Applicants to prepare the materials required to set up a virtual data room and a list of potential bidders.

D. REQUEST FOR APPROVAL OF THE PROPOSED SALE AND INVESTMENT SOLICITATION PROCESS AND STALKING HORSE AGREEMENT

- 15. At the commencement of the CCAA Proceedings, the Applicants advised that they intended to seek approval of a sale and investment solicitation process (the “SISP”). The proposed SISP is attached as **Appendix “C”** hereto. Capitalized terms in this section not otherwise defined herein have the meanings ascribed to them in the SISP.
- 16. At the hearing for approval of the SISP, the Applicants will seek the SISP Order and authorization for the Applicants and the Monitor to take such actions that may be necessary or desirable to carry out the SISP. The SISP will be carried out by the Applicants in consultation with the Monitor.
- 17. A summary of the SISP is set out below. If there are any discrepancies between the terms of the SISP and the description of same herein, the terms of the SISP shall govern.
- 18. The timing of key milestones relating to the SISP are as follows:

Milestone	Deadline
Commencement of SISP	January 29, 2024
Distribution of the Notice, Teaser Letter Confidentiality Agreement and Acknowledgement of SISP	As soon as reasonably practicable following the date on which the SISP Order is granted
Phase I Bid Deadline	February 29, 2024
Phase II Bid Deadline	March 15, 2024
Selection of Successful Bid(s), Back-Up Bid(s), or Notification of Auction (if any)	March 19, 2024
Auction (if any)	No later than March 22, 2024
Sale Approval Hearing	As soon as practicable
Closing Date Deadline	A maximum of 4 weeks after the Sale Approval Hearing, but by no later than the Outside Date

Pursuant to the SISP Order, the Monitor, with the approval of the Applicants and the DIP Lender, may amend the SISP and/or extend the timelines and milestones set out above.

OVERVIEW OF THE SISP

19. The Applicants have proposed a flexible SISP, designed to maximize opportunities for the sale of, or investment in, all or part of the Applicants' assets and business (the "**Opportunity**"). A potential transaction may include one or more of a restructuring, recapitalization or other form of reorganization of the business and affairs of the Applicants as a going concern, or a sale of all, substantially all, or one or more components of the Property and the Business as a going concern or otherwise.
20. The Monitor and the Applicants will develop a list of potential bidders. This list will include parties that have approached the Applicants or the Monitor and advised that they have an interest in the Opportunity, as well as strategic parties whom the Monitor or the Applicants believe may be interested in the Opportunity.
21. The Monitor, with the assistance of the Applicants, will prepare: (i) a Teaser Letter describing the Opportunity and inviting recipients of the Teaser Letter to express their interest pursuant to the SISP; and (ii) a form of Confidentiality Agreement to be sent to parties interested in the process.
22. The Monitor, with the assistance of the Applicants, will cause the Notice to be published in *The Globe & Mail* (National Edition), *Insolvency Insider* and any other newspaper, journal or industry publication as the Applicants and the Monitor consider appropriate.
23. The Monitor, with the assistance of the Applicants, will send the Teaser Letter, the Confidentiality Agreement and the Acknowledgement of the SISP to all Known Potential Bidders as soon as reasonably practicable following the date on which the SISP Order is granted, and to any other party who requests a copy of those materials or is otherwise identified to the Monitor or the Applicants as a potential bidder.
24. Each prospective bidder that has executed a Confidentiality Agreement and Acknowledgement of the SISP will be given access to an electronic data room created and

maintained by the Applicants or the Monitor containing confidential information related to the Opportunity.

PHASE I

25. Following their own due diligence, a Phase I Qualified Bidder who wishes to submit a Phase I Bid must deliver a non-binding letter of intent to the Monitor and the Applicants by no later than 5:00 p.m. (EST) on February 29, 2024.

26. In order for a Phase I Bid to be considered a Qualifying Phase I Bid, it must comply with certain conditions, including that:
 - (a) it is received by the Phase I Bid Deadline;
 - (b) it identifies the material terms and conditions of the proposed transaction;
 - (c) it clearly indicates a Purchase Price that is not less than the Minimum Bid Amount, estimated to be \$3,638,192.08 as of the Phase II Bid Deadline, which amount is comprised of the sum of: (i) the Purchase Price under the Stalking Horse Agreement; *plus* (ii) the Break Fee (i.e., \$60,000); *plus* (iii) a \$50,000 overbid; for greater certainty, such Purchase Price must provide for payment in full in cash on closing in an amount sufficient to satisfy all indebtedness, fees, and expenses owed by the Applicants under: (i) the DIP Facility; and (ii) any first-ranking secured debt of the Applicants held by the DIP Lender or its nominees or affiliates;
 - (d) it is accompanied by a cash deposit in an amount equal to 10% of the Purchase Price, paid to the Monitor in trust in accordance with the SISF;
 - (e) it identifies the proposed number of employees of the Applicants who are expected to become employees of the Phase I Bidder upon closing;
 - (f) it is accompanied by written evidence indicating that the Phase I Bidder has obtained, or shall obtain on or before the Phase II Bid Deadline, the necessary

sources of financing for it to close the proposed transaction, including contact details required to verify same;

- (g) it provides a description of any additional due diligence required in order to submit a Qualified Phase II Bid and the impact such due diligence may have on the Purchase Price;
 - (h) it clearly identifies each person that will be directly or indirectly sponsoring or participating in the Phase I Bid;
 - (i) it contains an acknowledgement and representation that the Phase I Bidder has relied solely upon its own independent review and due diligence, and did not rely on any statements, representations or similar things by the Applicants or the Monitor, in making its Phase I Bid;
 - (j) it contains evidence that the Phase I Bidder has obtained the requisite corporate authorizations and approvals in respect of its Phase I Bid; and
 - (k) it does not include any request or entitlement to any break or termination fee, expense reimbursement or similar payment.
27. The Stalking Horse Agreement shall be deemed to be a Qualified Phase I Bid for purposes of the SISP.
28. The Applicants, with the consent of the Monitor, may aggregate Portion Bids received to meet or exceed the Minimum Bid Amount.
29. The Applicants, with the Monitor's consent, may waive compliance with any one or more of these requirements to qualify a Qualified Phase I Bid.
30. If no Qualified Phase I Bids are received by the Phase I Bid Deadline (other than the Stalking Horse Agreement), then: (i) the Stalking Horse Agreement shall be declared the Successful Bid; (ii) Phase II of the SISP will not be conducted; and (iii) the Applicants will seek Court approval of the Stalking Horse Agreement as the Successful Bid.

PHASE II

31. If one or more Qualified Phase I Bids are received by the Phase I Bid Deadline (in addition to the Stalking Horse Agreement), the SISP will continue to Phase II, with binding offers being required on or before 5:00 p.m. (EST) on March 15, 2024. A Phase II Bid will be considered a Qualified Phase II Bid if it complies with certain conditions, including that:
- (a) it has been received by the Phase II Bid Deadline;
 - (b) it complies with all of the requirements for a Phase I Bid;
 - (c) it contains a cover letter stating that the Phase II Bid is irrevocable until Court approval of the Successful Bid(s), provided that if such Phase II Bidder is selected as the Successful Bidder or the Back-Up Bidder, its Phase II Bid shall remain irrevocable until the Back-Up Bid Expiration Date;
 - (d) it provides full details of the proposed number of employees of the Applicants who will become employees of the Phase II Bidder upon closing;
 - (e) it contains a duly authorized and executed definitive purchase agreement, together with all completed schedules thereto, along with a blackline to the Form Purchase Agreement (in the case of a Sale Proposal) or a duly authorized and executed binding term sheet (in the case of an Investment Proposal);
 - (f) it is not conditional on the outcome of further due diligence, obtaining financing and/or any other material closing conditions;
 - (g) it is accompanied by written evidence that the Phase II Bidder has the necessary financial ability to fully fund and consummate the transaction contemplated by the Phase II Bid and satisfy its obligations under the definitive purchase agreement;
 - (h) it contains an acknowledgement and representation that the Phase II Bidder has relied solely upon its own independent review and due diligence, and did not

rely on any statements, representations or similar things by the Applicants or the Monitor, in making its Phase II Bid;

- (i) it contains an acknowledgement and representation that the Phase II Bidder will promptly commence any governmental or regulatory review of the proposed transaction by the applicable competition, antitrust or other applicable governmental authorities, including those regulating in the cannabis sector; and
 - (j) it contains evidence that the Phase II Bidder has obtained the requisite corporate authorizations and approvals in respect of its Phase II Bid.
32. The Applicants and the Monitor will review and evaluate each Phase II Qualified Bid that is received and will determine the Successful Bid and the Back-up Bid (if any). As part of this evaluation, the Monitor may conduct an auction in accordance with the auction procedures set forth in Schedule “C” of the SISP.
33. Upon the selection of the Successful Bid and the Back-up Bid (if any), the Applicants will apply to the Court for the approval of the Successful Bid.

OVERVIEW OF THE STALKING HORSE AGREEMENT¹

34. In an effort to provide certainty and stability during these CCAA Proceedings and the SISP, the SISP includes the Stalking Horse Agreement, the material terms of which are as follows:
- (a) Trees, the parent company of each of the other Applicants, will issue new common shares to the Stalking Horse Bidder through a reverse vesting transaction, pursuant to which all existing equity interests of Trees will be extinguished without consideration, and the Stalking Horse Bidder will become the sole shareholder of Trees;

¹ All capitalized terms used in this section and not otherwise defined shall have the meanings given thereto in the form of Stalking Horse Agreement.

- (b) prior to the acquisition of those shares, ResidualCo will be incorporated and all of the Excluded Assets and Excluded Liabilities of the Applicants will be transferred to ResidualCo pursuant to the terms of a reverse vesting order;
- (c) the Purchase Price is an amount equal to:
 - (i) *Credit Bid Consideration*: the outstanding indebtedness owed by the Applicants under: (A) the debt that the Stalking Horse Bidder holds against the Applicants under the DIP Term Sheet; and (B) the other first-ranking secured debt that the Stalking Horse Bidder holds against the Applicants, which aggregate amount as of January 17, 2024 is estimated to be \$2,360,945 (which amount shall be satisfied through the Stalking Horse Bidder's credit bid of such secured debt); *plus*
 - (ii) *GST/HST Obligations*: the amount of the Pre-Filing GST/HST Obligations, estimated to be \$198,773.48 (which amount shall be satisfied by the Stalking Horse Bidder's assumption of such liabilities); *plus*
 - (iii) *Cash Consideration*: an amount sufficient to satisfy: (A) the Administration Expense Amount; *plus* (B) any Post-Filing Tax Obligations, to the extent that the Applicants do not have sufficient funds on or before the Closing Date to satisfy such amounts (which amount shall be satisfied by a payment in cash to the Monitor);
- (d) as noted, some or all of the cash portion of the Purchase Price will be used to pay to the Monitor the Administrative Expense Amount, which amount the Monitor will use to pay the Administrative Expense Costs and the CCAA Charge Amount (*i.e.*, an amount sufficient to satisfy the obligations secured by the CCAA Charges);

- (e) the Stalking Horse Bidder, through its ownership of Trees, will retain only the following liabilities of the Applicants:
 - (i) all Post-Filing Claims;
 - (ii) all post-Closing liabilities of the Applicants;
 - (iii) to the extent that the Applicants do not have sufficient funds on or before the Closing Date to satisfy such amounts or such amounts are not otherwise paid with the Cash Consideration, any and all Claims in priority to the Credit Bid Consideration;
 - (iv) the Pre-Filing GST/HST Obligations;
 - (v) Intercompany Claims; and
 - (vi) such other liabilities as set forth in the Schedules to the Stalking Horse Agreement, which are to be completed by the Phase I Bid Deadline;
- (f) the Stalking Horse Bidder intends to assume all store-level employees of the Applicants and, in any event, no fewer than 95% of the total current number of store-level employees of the Applicants shall receive an offer of employment;
- (g) the Stalking Horse Bidder is entitled to a Break Fee equal to \$60,000, which amount is equal to approximately 1.6% of the Purchase Price; and
- (h) the Outside Date to consummate the Transactions is April 30, 2024.

THE MONITOR'S INVOLVEMENT IN THE SISP AND STALKING HORSE AGREEMENT

35. The Monitor was consulted in designing the SISP and was party to discussions with One Plant as a potential stalking horse bidder. The Monitor was provided the opportunity to comment on the SISP and on the form of Stalking Horse Agreement. The Monitor will be actively involved in the conduct of the SISP, including through frequent consultation with the Applicants and potential bidders.

36. The Applicants and the Monitor will carry out the SISP in the manner approved by the Court. The Monitor is entitled to receive all information in relation to the SISP and will have certain approval rights in respect of key steps taken therein.
37. The SISP Order provides that the Monitor, the Applicants and their respective affiliates, partners, employees, representatives and agents will have no liability with respect to any claims in connection the conducting of the SISP, except to the extent such claims result from the gross negligence or wilful misconduct of the Monitor or the Applicant, as applicable.

MONITOR'S COMMENTS AND RECOMMENDATION

38. As described in the affidavit of Jeffrey Holmgren sworn January 23, 2024 (the "**Holmgren Affidavit**"), the Applicants engaged in discussions with One Plant to act as a potential stalking horse bidder in these CCAA Proceedings.
39. The SISP procedures contemplate a marketing process to provide any additional parties with the ability to submit a bid with respect to the Opportunity.
40. To date, the Monitor has received several inbound calls from prospective purchasers interested in the SISP, which the Monitor has added to its outreach list. The Monitor has also been working with the Applicants to populate the virtual data room for the SISP. The Monitor expects to be in a position to commence the SISP immediately following the Court's granting of the SISP Order.
41. The benefits of having a stalking horse bid are well recognized by the CCAA courts, including:
 - (a) setting a "floor price" for the business and assets, enabling interested parties to understand from the start of a SISP, the value that they have to beat in order to become a successful bidder;

- (b) providing certainty of a going-concern solution for the operations through a transaction that can be closed if there are no superior offers, thereby helping maintain stability and operations during the proceedings; and
 - (c) streamlining the bidding process as the stalking horse agreement provides a template for competing bidders to use for the submission of competing offers.
42. The Monitor has considered whether, in light of the fact that the Stalking Horse Agreement is structured as a reverse vesting order (“**RVO**”) transaction, it is reasonable and appropriate for the Court to approve the Stalking Horse Agreement solely for purposes of constituting the “Stalking Horse Agreement” under the SISP. The Monitor is aware that reverse vesting orders are not the “norm” in insolvency proceedings and should be sought only in exceptional circumstances with consideration for various factors recently set out by a number of Canadian courts, including those set out by Justice Penny in *Harte Gold Corp. (Re)*, 2022 ONSC 653.
43. Although the approval of an RVO is not before the Court in the Applicants’ motion, the Monitor considers it appropriate to comment briefly, given that the Stalking Horse Agreement contemplates an RVO structure. The Monitor notes that RVOs are commonly sought and granted in the context of distressed sales in the cannabis industry because the business is dependent upon licenses and a regulatory framework that is not easily addressed in the traditional asset sale and vesting order framework. Accordingly, while the Court will have to be satisfied as to the appropriateness of an RVO at the proper time, the Monitor believes it is appropriate to approve the Stalking Horse Agreement for the purpose of acting as a stalking horse bid notwithstanding that it utilizes an RVO structure. The Monitor will comment more fully on the propriety of an RVO structure in the event that the successful bid arising from the SISP is, in fact, an RVO transaction.
44. The Monitor has reviewed all stalking horse processes valued at lower than \$10 million and approved in CCAA and *Bankruptcy and Insolvency Act* proceedings between January 2019 to December 2023 (the “**Stalking Horse Comparison Period**”) in order to assess the reasonableness of the break fees approved by the Courts. The Monitor has also reviewed

all credit bids approved by the Courts during the Stalking Horse Comparison Period. Attached as **Appendix “D”** is a chart of the observed break fees ranging in size from approximately 2.4% to 5.0% for the six bids reviewed during the Stalking Horse Comparison Period, and break fees ranging in size from approximately 0% to 4.8% for the two credit bids reviewed during the same period. The results are also summarized in the tables below:

All Stalking Horse Bids	Transaction Value (“TV”) ¹	Total Fees ²	Total Fees % of TV
Maximum	7,240,000	174,800	2.4%
Average	4,236,518	168,300	4.0%
Minimum	1,500,000	75,000	5.0%

Credit Bids	Transaction Value (“TV”)	Total Fees	Total Fees % of TV
Maximum	6,750,000	325,000	4.8%
Average	4,875,000	162,500	3.3%
Minimum	3,000,000	0	0%

Notes

1. Transaction Value is the stalking horse bid value

2. Total Fees include Break Fees and Expense Reimbursements

45. The Monitor notes that the proposed Stalking Horse Agreement has fees totalling approximately 3%, which fees include the Break Fee, the Commitment Fee under the A&R DIP Term Sheet (as described below) and accrued interest under the DIP Facility. Based on the experience of the Monitor and its review of stalking horse processes lower than \$10 million during the Stalking Horse Comparison Period, the Monitor is of the view that the Break Fee provided in the Stalking Horse Agreement is lower than the average rate during the Stalking Horse Comparison Period and is reasonable in the circumstances.
46. The Monitor, therefore, is of the view that, in the circumstances:

- (a) the SISP provides for a broad, open, fair and transparent process with an appropriate level of independent oversight and flexibility necessary for the Applicants to consider the broad range of potential transactions that may be available to generate value from the Business;
 - (b) the SISP should encourage and facilitate bidding by interested parties and no aspect of the SISP should discourage parties from submitting bids;
 - (c) the SISP provides a reasonable opportunity for other bidders to submit a bid;
 - (d) if necessary, the Auction process will provide the opportunity for all Qualified Phase 2 Bidders, including the Stalking Horse Bidder, to further increase their bids, thereby ensuring that realizations are maximized for all stakeholders of the Applicants;
 - (e) given the efforts described in the Holmgren Affidavit regarding its discussions with One Plant, the fact that One Plant is the DIP Lender and the liquidity issues faced by the Applicants, the timelines of the SISP are reasonable;
 - (f) the provisions of the SISP, including the potential Auction, are reasonable, appropriate and reasonably consistent with both market practices and with SISP processes approved by the Court in other CCAA cases;
 - (g) the Break Fee set out in the Stalking Horse Agreement is within the range of rates identified as part of the Stalking Horse Comparison Period, and therefore is reasonable in the circumstances; and
 - (h) the SISP provides appropriate and reasonable oversight by the Monitor and will best enable the Applicants to maximize recoveries for its stakeholders.
47. Accordingly, the Monitor respectfully recommends that the Applicants' request for approval of the SISP and authorization to use the Stalking Horse Agreement as the Stalking Horse Bid in the SISP be granted.

E. AMENDED AND RESTATED DIP FACILITY AND INCREASE TO DIP LENDER'S CHARGE

48. Since the ARIO first approved the DIP Facility on January 2, 2024, the Monitor, in consultation with the Applicants, has developed the Revised and Extended Cash Flow Projections (defined below), which indicates that the Applicants will fully draw on the original principal amount of \$800,000 available under the DIP Facility by the week ending February 2, 2024. The Applicants, in consultation with the Monitor, have therefore determined that they will require additional funding to complete the SISF and close the Successful Bid or Back-Up Bid, as applicable.
49. Accordingly, the Applicants are seeking the approval of the A&R DIP Term Sheet, pursuant to which, among other things, the DIP Lender has agreed to increase the maximum principal available under the DIP Facility from \$800,000 to \$1,560,000.
50. The following is a summary of the A&R DIP Term Sheet's material amendments to the DIP Facility:
- (a) DIP Facility: The maximum principal amount of the DIP Facility shall be increased from the original commitment of \$800,000 to a new commitment of \$1,560,000, in accordance with the Revised and Extended Cash Flow Projections.
 - (b) Original Commitment: Advances made in respect of the original \$800,000 available under the DIP Facility shall continue to bear interest at a rate of 0% without a commitment fee.
 - (c) New Commitment: In respect of the new \$760,000 commitment (the "**New Commitment**"), advances shall be made in tranches of \$200,000 beginning no earlier than the week of February 16, 2024. Such advances shall be subject to the following key terms and conditions:
 - (i) interest shall accrue at the rate of 15% per annum;

- (ii) a commitment fee is payable to the DIP Lender in an amount of \$45,000, representing approximately 6% of the New Commitment;
 - (iii) the Applicants shall have conducted all material activities at all material times in accordance with the Cash Flow Projections in force at such time; and
 - (iv) if no Qualifying Phase I Bids are received under the SISP (other than the Stalking Horse Agreement) and the SISP is therefore terminated following the Phase I Bid Deadline, the New Commitment shall be reduced from \$760,000 to \$410,000.
- (d) Maturity Date: The Maturity Date shall be extended to April 12, 2024, which the DIP Lender agrees may be extended for an additional 60 calendar days, subject to the Applicants achieving certain milestones.
- (e) Additional Event of Default: An additional Event of Default occurs where the Applicants fail to conduct all material activities at all material times in accordance with the Cash Flow Projections in force at such time.

51. Attached as **Appendix “E”** is a chart of the observed interest rates of DIP loans that are valued at less than \$2 million, for the period between January 2022 and December 2023 (“**DIP Comparison Period**”), which are summarized in the table below:

	Interest Rate	DIP Fees as a % of DIP Loan
Maximum	18%	11.8%
Average	9.6%	1.7%
Minimum	0%	0%

52. Based on the experience of the Monitor and on the information available to it, the Monitor is of the view that the interest rate provided in the A&R DIP Term Sheet is within an acceptable range as compared to the DIP loans that the Monitor reviewed over the DIP Comparison Period. The Commitment Fee as a percentage of the New Commitment is also

within an acceptable range during the DIP Comparison Period. The Monitor is of the view that both fees are reasonable in the circumstances. The Monitor notes that the DIP Lender is entitled to be reimbursed for its reasonable professional fees associated with providing the DIP Facility as previously approved by the Court and that the Monitor has not considered these reimbursement entitlements in its above comparative analysis.

53. The Monitor supports the Applicants' request for the Court's approval of the A&R DIP Term Sheet, the corresponding increase to the maximum principal amount available under the DIP Facility and the increase to the maximum amount of the DIP Lender's Charge.
54. In coming to this conclusion, the Monitor has considered, among other things, that without this relief, the Revised and Extended Cash Flow Projections indicates that the Applicants will have insufficient liquidity to continue these CCAA proceedings beyond the week of February 2, 2024, and will therefore be unable to complete the SISP or close a transaction. The Monitor is also mindful of the costs of switching to a new lender to provide fresh debtor-in-possession financing to cover this shortfall, including the risk that such a new lender might not be found. In light of these considerations, the Monitor views the terms of the A&R Term Sheet as fair and reasonable in the circumstances.

F. THE SECURITY OPINIONS

55. Given the Stalking Horse Agreement is structured as a credit bid whereby the Stalking Horse Bidder would credit bid, among other things, the Trees Security and the OCH Security, the Monitor has instructed its counsel, Torys, to provide opinions as to the validity and enforceability of the Trees Security and the OCH Security.
56. In respect of the Trees Security, Torys has prepared a written opinion dated January 19, 2024 (the "**Trees Security Opinion**"). Subject to the customary qualifications and assumptions set out therein, Torys opines in the Trees Security Opinion that:
 - (a) the Trees Security constitutes a valid and enforceable obligation of Trees in favour of One Plant;

- (b) the Trees Security creates in favour of One Plant a valid security interest in the undertaking, business, property, assets, interests and rights of Trees that is subject to the applicable security documents (collectively, the “**Trees Charged Property**”);
 - (c) the Trees Security has been registered, filed or recorded in all public offices where the registration, filing or recording thereof is required under the laws of the Province of Alberta to perfect the security interest created thereby in the Trees Charged Property to which the Alberta PPSA applies; and
 - (d) the Trees Security has been registered, filed or recorded in all public offices where the registration, filing or recording thereof is required under the laws of the Province of Ontario to perfect the security interest created thereby in the Trees Charged Property to which the Ontario PPSA applies.
57. Due to the applicable loan and security documents governing the Trees Security being governed by Alberta law, Torys’ opinions described in paragraphs 56(a) to 56(c) are restricted to the laws of the Province of Alberta and the laws of Canada applicable therein. Torys’ opinion described in paragraph 56(d) is restricted to the laws of the Province of Ontario and the laws of Canada applicable therein.
58. In respect of the OCH Security, Torys has prepared a written opinion dated January 19, 2024 (the “**OCH Security Opinion**”). Subject to the customary qualifications and assumptions set out therein, Torys opines in the OCH Security Opinion that:
- (a) the OCH Security constitutes a valid and enforceable obligation of OCHC and OCHOCC in favour of One Plant;
 - (b) the OCH Security creates in favour of One Plant a valid security interest in the undertaking, business, property, assets, interests and rights of OCHC and OCHOCC that is subject to the applicable security documents (collectively, the “**OCH Charged Property**”); and

- (c) the OCH Security has been registered, filed or recorded in all public offices where the registration, filing or recording thereof is required under the laws of the Province of Ontario to perfect the security interest created thereby in the OCH Charged Property to which the Ontario PPSA applies.

G. SECURITIES ACT RELIEF

- 59. The Second ARIO includes language that would grant the Applicants relief from certain obligations under applicable securities laws, regulations and rules, including the *Securities Act* (Alberta).
- 60. Specifically, these amendments, among other things, would authorize Trees to incur no further expenses in relation to any filings (including financial statements), disclosures, core or non-core documents, restatements, amendments to existing filings, press releases or any other actions (collectively, the “**Securities Filings**”) and any future annual general meetings of the shareholders of Trees (a “**Shareholders’ Meeting**”) that may be required by any federal, provincial or other law respecting securities or capital markets in Canada.
- 61. The Second ARIO also includes language providing that none of the directors, officers, employees, or other representatives of the Applicants, nor the Monitor, shall have any personal liability for any failure by the Applicants to make any Securities Filings required by applicable securities legislation, regulations or rules.
- 62. Finally, the Second ARIO explicitly states that the above relief does not restrict the ability of any securities regulator or stock exchange from taking any action or exercising any discretion permitted under the CCAA, nor does it encroach on the jurisdiction of any securities regulatory authorities in the manner of regulating the conduct of market participants.
- 63. The Monitor has been advised by the Applicants’ counsel that they have had direct discussions with the Alberta Securities Commission (the “**ASC**”) regarding this proposed relief, and that the ASC has no concerns with the relief sought.

64. The Monitor understands that this relief is being sought by the Applicants given the time and costs associated with preparing the Securities Filings and holding Shareholders' Meetings, which would detract the Applicants from focusing on the SISP, a successful transaction and their restructuring and would increase the overall costs of the restructuring. The Monitor notes that detailed financial information will continue to be made publicly available through the materials filed in the CCAA Proceedings.
65. In the Monitor's experience, this type of relief is not uncommon for public companies that commence CCAA proceedings and the Monitor is supportive of this relief sought by the Applicants in the circumstances.

H. RECEIPTS AND DISBURSEMENTS FOR THE TWO-WEEK PERIOD ENDING JANUARY 12, 2024

66. The Applicants' actual negative net cash flow for the two-week period ending January 12, 2024 was approximately \$112,000, as compared to a forecast negative net cash flow of approximately \$558,000 noted in the Cash Flow Projection previously filed as Appendix "B" to the Former Monitor's First Report. This represents a positive variance of approximately \$446,000, as summarized below:

Trees Corporation Variance Analysis \$CDN 000's				
Forecast Week Ending (Friday)	Forecasts	Actuals	Variance	
			\$	%
Receipts				
Retail Sales and Other Receipts	\$ 1,210	\$ 731	\$ (479)	-40%
Total Receipts	1,210	731	- 479	-40%
Disbursements				
Cannabis and Accessory Inventory Purchases	795	507	(288)	-36%
Payroll Costs	219	151	(68)	-31%
Rent	120	90	(31)	-26%
Operational G&A and Taxes	334	71	(263)	-79%
Restructuring Costs	300	25	(275)	-92%
Total Disbursements	1,767	843	(924)	-52%
Net cash receipts/(disbursements)	\$ (558)	\$ (112)	\$ 446	-80%
Cash on hand				
Opening Balance	\$ 169	\$ 169	\$ -	0%
DIP Facility Draw/Repayment	540	-	(540)	-100%
Net Cash Receipts/(disbursements)	(558)	(112)	446	-80%
Ending cash balance	\$ 151	\$ 57	\$ (94)	-62%
Proposed Debt-in-Process Financing				
Opening balance	\$ 60	\$ 60	\$ -	0%
Draw/(Repayment)	540	-	(540)	-100%
Commitment fee	-	-	-	0%
Accrued Interest	-	-	-	0%
Ending balance	\$ 600	\$ 60	\$ (540)	-90%

67. The Cash Flow Projection previously filed as Appendix “B” to the Former Monitor’s First Report included a duplicative forecast period and, as a result, the forecast period above for purposes of determining the receipts and disbursements for a two-week period includes duplication of the week ending December 31, 2023. The key reasons for the variances noted in the table above, excluding the duplicative period, are as follows:

- (a) the negative variance in *Total Receipts* was primarily due to lower than expected receipts from retail sales and LP collections;
- (b) the positive variance in *Cannabis and Accessory Inventory Purchases* was primarily driven by lower than expected inventory purchases as a result of lower than forecasted sales and anticipated store closures;
- (c) the positive variance in *Rent* was primarily driven by timing of rent payments, as well as lower than forecasted payments related to disclaimed leases. A

portion of this variance is expected to reverse in future weeks as pro-rata post-filing lease payments are made;

- (d) the positive variance in *Operational G&A and Taxes* was primarily driven by lower than forecasted legal payments to external corporate counsel. A portion of this variance is expected to reverse in future weeks as invoices are received and paid out; and
- (e) the positive variance in *Restructuring Costs* was driven by the timing of restructuring fees disbursed. A portion of this variance is expected to reverse in future weeks as invoices are received and paid out.

I. REQUEST FOR AN EXTENSION OF THE STAY PERIOD

- 68. The Stay Period currently expires on February 29, 2024. The Applicants are requesting an extension of the Stay Period to and including April 12, 2024. The Applicants require additional time to implement the SISP and select a Successful Bid.
- 69. The Applicants' Cash Flow Projection demonstrates that, with the increase to the DIP Facility provided by the A&R DIP Term Sheet, the Applicants expect to have sufficient liquidity to fund the CCAA Proceedings during the requested extension of the Stay Period.
- 70. As demonstrated by the Cash Flow Projection attached to this Report as **Appendix "F"** (the "**Revised and Extended Cash Flow Projections**"), the Applicants forecast that they will have sufficient liquidity to fund their obligations and the costs of the CCAA proceedings through the end of the extended Stay Period. The Revised and Extended Cash Flow Projection is summarized below:

Trees Corporation	
Consolidated Cash Flow Forecast	
\$CDN 000's	
Forecast Week Ending (Friday)	Total 13 Weeks
Receipts	
Retail Sales and Other Receipts	\$ 4,095
Total Receipts	4,095
Disbursements	
Cannabis and Accessory Inventory Purchases	2,525
Payroll Costs-includes benefits	826
Rent	267
Operational G&A and Taxes	481
Restructuring Costs	1,477
Total Disbursements	5,577
Net Cash Flow	\$ (1,481)
Cash on hand	
Opening Balance	\$ 57
DIP Facility Draw/Repayment	1,560
Net Cash Flow	(1,481)
Ending cash balance	\$ 136
Proposed Debt-in-Procession Financing	
Opening balance	\$ 60
Draw/(Repayment)	1,560
Commitment fee	45
Accrued Interest	13
Ending balance	\$ 1,678

71. The Cash Flow Projection shows *Total Receipts* of \$4.1 million and *Total Disbursements* of \$5.6 million, of which \$1.5 million is restructuring costs of which \$0.36 million relates to costs up to the appointment of the Monitor. The negative net cash flow for the 13-week period is \$1.5 million. As such, the Applicants will require additional draws from the DIP Facility of approximately \$1.6 million during the 13-week period ending April 12, 2024. The Monitor notes that, pursuant to the A&R DIP Term Sheet, if Phase II of the SISP is not required, the DIP Lender will not be required to fund advances greater than \$1.2 million. In this scenario, the Applicants will continue to have sufficient liquidity during the Stay Period because the Applicants will avoid the forecasted restructuring costs associated with Phase II of the SISP and a potential Auction.
72. The Monitor believes that the Applicants have acted and continue to act in good faith and with due diligence and that circumstances exist that make an extension of the Stay Period appropriate.

73. Based on the information currently available, the Monitor also believes that creditors of the Applicants would not be materially prejudiced by an extension of the Stay Period to April 12, 2024.
74. The Monitor supports the Applicants' request for an extension of the Stay Period to April 12, 2024, including in light of the SISP and the timelines set out therein.

J. MOTION FOR FEE APPROVAL

75. The Monitor supports the Applicants' motion for approval of:
 - (a) the fees and disbursements of the Former Monitor for the period from December 17, 2023 to January 2, 2024, in an amount of \$66,817.48, inclusive of disbursements and taxes; and
 - (b) the fees and disbursements of Torys, in its capacity as the Former Monitor's legal counsel, for the period from December 18, 2023 to January 2, 2024, in an amount of \$70,062.19, inclusive of disbursements and taxes.
76. The work performed by the Former Monitor was critical to these CCAA Proceedings and permitted an efficient transition of the monitor role to the Monitor. As set forth in the Former Monitor's Pre-Filing Report and the Former Monitor's First Report, the Former Monitor, among other things:
 - (a) reviewed the Applicants' books and records, including those relating to their credit facilities;
 - (b) engaged with the Applicants' management on various calls and correspondence to better understand their business and the challenges that led to their CCAA filing;
 - (c) assisted the Applicants in preparing their 13-week cash flow forecast and a proposed budget underlying that forecast;

- (d) helped the Applicants with considering cost reduction opportunities and options with respect to unprofitable retail locations;
- (e) responded to calls and e-mails received from creditors, employees and other parties with respect to these CCAA Proceedings during the comeback period;
- (f) reviewed the Applicants' disbursements; and
- (g) participated in discussions among the Applicants and certain stakeholders in respect of the January 2, 2024 comeback hearing and related issues.

77. The Monitor respectfully submits that the fees and disbursements of the Former Monitor and of Torys, as counsel to the Former Monitor, are reasonable in the circumstances and have been validly incurred in accordance with the provisions of the Initial Order.

K. CONCLUSION

78. For the reasons stated in this Report, the Monitor supports the relief sought by the Applicants as summarized herein. The Monitor respectfully submits to the Court this Report.

The Monitor respectfully submits to the Court this, its First Report.

Dated this 24th day of January, 2024.

FTI Consulting Canada Inc.
In its capacity as Monitor of
Trees Corporation, Ontario Cannabis Holdings Corp.,
Miraculo Inc., 2707461 Ontario Ltd.,
OCH Ontario Consulting Corp., and 11819496 Canada Inc.
And not in its personal or corporate capacity



Jeffrey Rosenberg
Senior Managing Director



Jodi Porepa
Senior Managing Director

Appendix A

Amended and Restated Initial Order dated January 2, 2024



Court File No. CV-23-00711935-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

THE HONOURABLE CHIEF) TUESDAY, THE 2ND
JUSTICE MORAWETZ) DAY OF JANUARY, 2024

IN THE MATTER OF THE *COMPANIES' CREDITORS
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF **TREES CORPORATION, ONTARIO
CANNABIS HOLDINGS CORP., MIRACULO INC., 2707461
ONTARIO LTD., OCH ONTARIO CONSULTING CORP.,
AND 11819496 CANADA INC.** (collectively, the "**Applicants**")

AMENDED AND RESTATED INITIAL ORDER

THIS MOTION, made by the Applicants, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") was heard this day by way of judicial video conference in Toronto, Ontario by Zoom videoconference.

ON READING the affidavit of Jeffrey Holmgren sworn December 21, 2023, and the Exhibits thereto (the "**Initial Holmgren Affidavit**"), the affidavit of Jeffrey Holmgren sworn December 29, 2023 (the "**Second Holmgren Affidavit**" and, together with the Initial Holmgren Affidavit, the "**Holmgren Affidavits**") the Pre-Filing Report of Ernst & Young Inc. dated December 21, 2023 (the "**Pre-Filing Report**"), the First Report of Ernst & Young Inc. dated December 29, 2023, and on being advised that the secured creditors who are likely affected by the charges created herein were given notice, and on hearing the submissions of counsel for the Applicants, counsel for Ernst & Young Inc. and those other parties listed on the Participant Information Form, no one else appearing although duly served as appears from the Affidavits of

Service, and on reading the consent of FTI Consulting Canada Inc. to act as the monitor (the “**Monitor**”);

SERVICE AND DEFINITIONS

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record of the Applicants dated December 29, 2023, is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.

2. **THIS COURT ORDERS** that capitalized terms used herein that are not otherwise defined shall have the meaning ascribed to them in the Holmgren Affidavits.

APPLICATION

3. **THIS COURT ORDERS** that each of the Applicants is a company to which the CCAA applies.

PLAN OF ARRANGEMENT

4. **THIS COURT ORDERS** that the Applicants shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the “**Plan**”).

POSSESSION OF PROPERTY AND OPERATIONS

5. **THIS COURT ORDERS** that the Applicants shall remain in possession and control of their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the “**Property**”). Subject to further Order of the Court, the Applicants shall continue to carry on business in a manner consistent with the preservation of their business (the “**Business**”) and Property. The Applicants are authorized and empowered to continue to retain and employ their employees, consultants, agents, experts, accountants, counsel and such other persons (collectively “**Assistants**”) currently retained or employed by them, with liberty to retain such further Assistants as they deem reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

6. **THIS COURT ORDERS** that the Applicants shall be entitled to continue to utilize the cash management system currently in place as described in the Initial Holmgren Affidavit or replace it with another substantially similar central cash management system (the "**Cash Management System**"), and that any present or future bank or financial institution providing the Cash Management System: (a) shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Applicants of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, (b) shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Applicants, pursuant to the terms of the documentation applicable to the Cash Management System, and (c) shall be, solely in its capacity as provider of the Cash Management System only, an unaffected creditor under the Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System on or after the date of this Order.

7. **THIS COURT ORDERS** that the Applicants shall be entitled but not required to pay the following expenses whether incurred prior to, on or after the date of this Order:

- (a) all outstanding and future wages, salaries, employee benefits (including, without limitation, employee medical, dental, vision, insurance and similar benefit plans or arrangements), reasonable amounts owing under corporate credit cards issued to management and employees of the Applicants, vacation pay and reasonable employee and director expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing practices, compensation policies and arrangements;
- (b) the fees and disbursements of any Assistants retained or employed by the Applicants prior to or after the commencement of these proceedings, at their standard rates and charges; and
- (c) with the consent of the Monitor, any taxes, duties or other payments required for goods or services actually provided to the Applicants prior to the date of this Order by third parties up to the maximum amount of \$50,000 if, in the opinion of the

Applicants, such third party is critical to the Business and ongoing operations of the Applicants.

8. **THIS COURT ORDERS** that, except as otherwise provided to the contrary herein, the Applicants shall be entitled but not required to pay all reasonable expenses incurred by the Applicants in carrying on their Business in the ordinary course after the date of this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors' and officers' insurance), maintenance and security services; and
- (b) payment for goods or services actually supplied to the Applicants following the date of this Order.

9. **THIS COURT ORDERS** that the Applicants shall, in accordance with legal requirements, remit or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority that are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, and (iii) income taxes;
- (b) all goods and services or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the Applicants in connection with the sale of goods and services by the Applicants, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order, and
- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured

creditors and which are attributable to or in respect of the carrying on of the Business by the Applicants.

10. **THIS COURT ORDERS** that until a real property lease is disclaimed in accordance with the CCAA, the relevant Applicant shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated between the relevant Applicant and the landlord from time to time ("**Rent**"), for the period commencing from and including the date of this Order, in accordance with the terms of the applicable lease agreement. On the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.

11. **THIS COURT ORDERS** that, except as specifically permitted herein, the Applicant is hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicant to any of its creditors as of this date; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of its Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

RESTRUCTURING

12. **THIS COURT ORDERS** that the Applicants shall, subject to such requirements as are imposed by the CCAA, have the right to:

- (a) permanently or temporarily cease, downsize or shut down any of their business or operations, and to dispose of redundant or non-material assets not exceeding \$150,000 in any one transaction or \$1,000,000 in the aggregate, in each case with the consent of the Monitor;
- (b) terminate the employment of their employees or temporarily lay off their employees as the Applicants deem appropriate; and

- (c) pursue all restructuring options for the Applicants including, without limitation, all avenues of refinancing of their Business or Property, in whole or in part, subject to prior approval of this Court being obtained before any material refinancing,

all of the foregoing to permit the Applicants to proceed with an orderly restructuring of the Business (the “**Restructuring**”).

13. **THIS COURT ORDERS** that the relevant Applicant shall provide each of the relevant landlords with notice of the relevant Applicant’s intention to remove any fixtures from any leased premises at least seven (7) calendar days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the relevant Applicant’s entitlement to remove any such fixture under the provisions of the applicable lease agreement, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the relevant Applicant, or by further Order of the Court upon application by the relevant Applicant on at least two (2) calendar days notice to such landlord and any such secured creditors. If the relevant Applicant disclaims the lease governing such leased premises in accordance with section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in section 32(5) of the CCAA), and the disclaimer of the lease shall be without prejudice to the relevant Applicant’s claim to the fixtures in dispute.

14. **THIS COURT ORDERS** that if a notice of disclaimer is delivered pursuant to section 32 of the CCAA, then: (a) during the notice period prior to the effective time of the disclaimer, the relevant landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the relevant Applicant and the Monitor 24 hours' prior written notice, and (b) at the effective time of the disclaimer, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the relevant Applicant in respect of such lease or leased premises, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

NO PROCEEDINGS AGAINST THE APPLICANTS OR THE PROPERTY

15. **THIS COURT ORDERS** that until and including February 29, 2024, or such later date as this Court may order (the "**Stay Period**"), no proceeding or enforcement process in or out of any court or tribunal or other forum (each, a "**Proceeding**") shall be commenced or continued against or in respect of the Applicants or the Monitor, or affecting their Business or their Property, except with the written consent of the Applicants and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicants or affecting their Business or their Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

16. **THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") against or in respect of the Applicants or the Monitor, or affecting their Business or their Property, are hereby stayed and suspended except with the written consent of the Applicants and the Monitor, or leave of this Court, provided that nothing in this Order shall:

- (a) empower the Applicants to carry on any business that the Applicants are not lawfully entitled to carry on;
- (b) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA;
- (c) prevent the filing of any registration to preserve or perfect a security interest; or
- (d) prevent the registration of a claim for lien.

NO INTERFERENCE WITH RIGHTS

17. **THIS COURT ORDERS** that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, lease, sublease, licence or permit in favour of or held by the Applicants, except with the written consent of the Applicants and the Monitor, or leave of this Court.

CONTINUATION OF SERVICES

18. **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements with the Applicants or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Business or the Applicants, are hereby restrained until further Order of the Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Applicants, and that the Applicants shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Applicants in accordance with normal payment practices of the Applicants or such other practices as may be agreed upon by the supplier or service provider and each of the Applicants and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

19. **THIS COURT ORDERS** that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of lease or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicants. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

20. **THIS COURT ORDERS** that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Applicants with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Applicants whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such

obligations, until a compromise or arrangement in respect of the Applicants, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicants or this Court.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

21. **THIS COURT ORDERS** that the Applicants shall indemnify their directors and officers against obligations and liabilities that they may incur as directors or officers of the Applicants after the commencement of the within proceedings, except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

22. **THIS COURT ORDERS** that the directors and officers of the Applicants shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**") on the Property, which charge shall not exceed an aggregate amount of \$100,000, as security for the indemnity provided in paragraph 21 of this Order.

23. **THIS COURT ORDERS** that the directors and officers of the Applicants shall be entitled to the benefit of and hereby granted a further charge (the "**Subsequent Directors' Charge**") on the Property, which charge shall not exceed an aggregate amount of \$383,000, as security for the indemnity provided in paragraph 21 of this Order. The Directors' Charge and the Subsequent Directors' Charge shall have the priorities set out in paragraphs 41 and 43 herein.

24. **THIS COURT ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Applicants' directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 21 of this Order.

APPOINTMENT OF MONITOR

25. **THIS COURT ORDERS** that FTI Consulting Canada Inc. is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Applicants with the powers and obligations set out in the CCAA or set forth herein and that the Applicants and their shareholders, officers, directors, and Assistants shall advise the

Monitor of all material steps taken by the Applicants pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

26. **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the Applicants' receipts and disbursements;
- (b) report to the Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- (c) assist the Applicants, to the extent required by the Applicants, in its dissemination to the DIP Lender (defined below) and its counsel on a monthly basis of financial and other information as agreed to between the Applicants and the DIP Lender which may be used in these proceedings including reporting on a basis to be agreed with the DIP Lender;
- (d) advise the Applicants in the preparation of the Applicants' cash flow statements and reporting required by the DIP Lender pursuant to the DIP Term Sheet, which information shall be reviewed with the Monitor and delivered to the DIP Lender and its counsel on a periodic basis, but not less than on a monthly basis, or as otherwise agreed to by the DIP Lender;
- (e) advise the Applicants in their development of the Plan and any amendments to the Plan;
- (f) assist the Applicants, to the extent required by the Applicants, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;
- (g) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the

- Applicants, to the extent that is necessary to adequately assess the Applicants' business and financial affairs or to perform its duties arising under this Order;
- (h) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order; and
 - (i) perform such other duties as are required by this Order or by this Court from time to time.

27. **THIS COURT ORDERS** that the Monitor shall not occupy or take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of (or be deemed to take Possession of), or exercise (or be deemed to have exercised) any rights of control over any activities in respect of, the Property, or any assets, properties or undertakings of any of the Applicants, or the direct or indirect subsidiaries or affiliates of any of the Applicants, including but not limited to any activities for which a permit or license is issued or required pursuant to any provision of any federal, provincial or other law respecting, among other things, the manufacturing, possession, processing, retail sale and distributing of cannabis or cannabis products including, without limitation, under the *Cannabis Act*, S.C. 2018, c. 16, the *Controlled Drugs and Substances Act*, S.C. 1996, c. 19, the *Excise Tax Act*, R.S.C. 1985, c. E. 15, *Excise Act*, 2001, S.C. 2002, c.22 the *British Columbia Cannabis Control and Licensing Act*, S.B.C. 2018, c. 29, the *British Columbia Cannabis Distribution Act*, S.B.C. 2018, c. 28, the *Ontario Cannabis Control Act*, 2017 S.O. 2017, c. 26, Sched. 1, *Ontario Cannabis Retail Corporation Act*, 2017 S.O. 2017, c. 26, the *Cannabis License Act*, 2018, S.O. 2018, c. 12, or other such applicable federal or provincial legislation, and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof, and nothing in this Order shall be construed as resulting in the Monitor being an employer or successor employer within the meaning of any statute, regulation or rule of law or equity, for any purpose whatsoever.

28. **THIS COURT ORDERS** that nothing herein contained shall require the Monitor to occupy or take Possession of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release

or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

29. **THIS COURT ORDERS** that that the Monitor shall provide any creditor of the Applicants and the DIP Lender with information provided by the Applicants in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicants is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicants may agree.

30. **THIS COURT ORDERS** that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of the Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

31. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor and counsel to the Applicants shall be paid their reasonable fees and disbursements (including pre-filing fees and disbursements), in each case at their standard rates and charges, by the Applicants as part of the costs of these proceedings. The Applicants are hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Applicants on a bi-weekly basis and, in addition, the Applicants are hereby authorized to pay to the Monitor and counsel to

the Applicants, retainers in the amounts of \$25,000 each, to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

32. **THIS COURT ORDERS** that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

33. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor, and the Applicants' counsel shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of \$100,000, as security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings.

34. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor, and the Applicants' counsel shall be entitled to the benefit of and are hereby granted a further charge (the "**Subsequent Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of \$400,000, as security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings. The Administration Charge and the Subsequent Administration Charge shall have the priorities set out in paragraphs 41 and 43 hereof.

DIP FINANCING

35. **THIS COURT ORDERS** that Trees Corporation, OCH Ontario Consulting Corp., 2707461 Ontario Ltd., 11819496 Canada Inc., Ontario Cannabis Holdings Corp. and Miraculo Inc. (collectively, the "**Borrowers**") are hereby authorized and empowered to obtain and borrow under a credit facility from One Plant Retail Corp. (the "**DIP Lender**") in order to finance the Borrowers' working capital requirements and other general corporate purposes and capital expenditures, provided that borrowings under such credit facility shall not exceed \$800,000 (the "**DIP Facility**"), unless permitted by further Order of this Court.

36. **THIS COURT ORDERS** that the DIP Facility shall be on the terms and subject to the conditions set forth in the DIP Term Sheet between the Borrowers and the DIP Lender dated as

of December 21, 2023 (the "**DIP Term Sheet**"), filed, except that there shall be no commitment fee payable by the Applicants to the DIP Lender, the interest rate of the DIP Facility shall be at the rate of 0.0% interest per annum, and section 9(c) of the DIP Term Sheet shall be rendered inoperative and deleted from the DIP Term Sheet.

37. **THIS COURT ORDERS** that the Applicants are hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively, the "**Definitive Documents**"), as are contemplated by the DIP Term Sheet or as may be reasonably required by the DIP Lender pursuant to the terms thereof, and the Borrowers are hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, liabilities and obligations to the DIP Lender under and pursuant to the DIP Term Sheet and the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

38. **THIS COURT ORDERS** that the DIP Lender shall be entitled to the benefit of and is hereby granted a charge (the "**DIP Lender's Charge**") on the Property, which DIP Lender's Charge shall not secure an obligation that exists before this Order is made. The DIP Lender's Charge shall have the priority set out in paragraphs 41 and 43 hereof.

39. **THIS COURT ORDERS** that, notwithstanding any other provision of this Order:

- (a) the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lender's Charge or any of the Definitive Documents;
- (b) upon the occurrence of an event of default under the DIP Term Sheet or the Definitive Documents, the DIP Lender, upon four business days' written notice to the Applicants and the Monitor, may exercise any and all of its rights and remedies against the Applicants or the Property under or pursuant to the DIP Term Sheet, the Definitive Documents and the DIP Lender's Charge, including without limitation, to cease making advances to the Applicants and set off and/or consolidate any amounts owing by the DIP Lender to the Applicants against the obligations of the Applicants to the DIP Lender under the DIP Term Sheet, the Definitive Documents or the DIP

- Lender's Charge, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Applicants and for the appointment of a trustee in bankruptcy of the Applicants; and
- (c) the foregoing rights and remedies of the DIP Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicants or the Property.

40. **THIS COURT ORDERS** that the DIP Lender shall be treated as unaffected in any plan of arrangement or compromise filed by the Applicants under the CCAA, or any proposal filed by the Applicants under the *Bankruptcy and Insolvency Act* (Canada) (the "**BIA**"), with respect to any advances made under the DIP Term Sheet or the Definitive Documents.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

41. **THIS COURT ORDERS** that the priorities of the Directors' Charge, the Subsequent Directors' Charge, the Administration Charge, the Subsequent Administration Charge and the DIP Lender's Charge (collectively, the "**Charges**"), as among them, shall be as follows:

First – Administration Charge (to the maximum amount of \$100,000);

Second – DIP Lender's Charge (to the maximum amount of \$1,100,000);

Third – Directors' Charge (to the maximum amount of \$100,000);

Fourth – Subsequent Administration Charge (to the maximum amount of \$400,000); and

Fifth – Subsequent Directors' Charge (to the maximum amount of \$383,000).

42. **THIS COURT ORDERS** that the filing, registration or perfection of the Charges shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

43. **THIS COURT ORDERS** that each of the Charges shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person provided that the Subsequent Directors' Charge and the Subsequent Administration Charge shall rank subsequent to the security interests of One Plant Retail Corp. (in its capacity as existing secured creditor of the Applicants and not as the DIP Lender), CJ Marketing Ltd. and Arthur Minh Tri Nguyen-Cao.

44. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicants shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Charges, unless the Applicants also obtain the prior written consent of the Monitor and the beneficiaries of the Charges affected thereby (collectively, the "**Chargees**"), or further Order of this Court.

45. **THIS COURT ORDERS** that the Charges, the DIP Term Sheet, and the Definitive Documents shall not be rendered invalid or unenforceable and the rights and remedies of the Chargees, including the DIP Lender, shall not otherwise be limited or impaired in any way by: (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "**Agreement**") that binds the Applicants, and notwithstanding any provision to the contrary in any Agreement:

- (a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the DIP Term Sheet or the Definitive Documents shall create or be deemed to constitute a breach by the Applicants of any Agreement to which it is a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the Applicants entering into

- the DIP Term Sheet, the creation of the Charges, or the execution, delivery or performance of the Definitive Documents; and
- (c) the payments made by the Applicants pursuant to this Order, the DIP Term Sheet or the Definitive Documents, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

46. **THIS COURT ORDERS** that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Applicants' interest in such real property leases.

SERVICE AND NOTICE

47. **THIS COURT ORDERS** that the Monitor shall, to the extent not already completed by Ernst & Young Inc.: (i) without delay, publish in the Globe & Mail (National Edition) a notice containing the information prescribed under the CCAA, (ii) within five days after the date of this Order, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against the Applicants of more than \$1,000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder.

48. **THIS COURT ORDERS** that the E-Service Guide of the Commercial List (the "**Guide**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Guide (which can be found on the Commercial List website at: <https://www.ontariocourts.ca/scj/practice/regional-practice-directions/eservice-commercial/>) shall be valid and effective service. Subject to Rule 17.05 of the *Rules of Civil Procedure* and paragraph 7 of the Guide, this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the *Rules of Civil Procedure*. Subject to Rule 3.01(d) of the *Rules of Civil Procedure* and paragraph 13 of the Guide, service of documents in accordance with the Guide will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Guide.

49. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Applicants and the Monitor are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Applicants' creditors or other interested parties at their respective addresses as last shown on the records of the Applicants and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

50. **THIS COURT ORDERS** that the Monitor shall create, maintain and update as necessary a list of all Persons appearing in person or by counsel in this proceeding (the "**Service List**"). The Monitor shall post the Service List, as may be updated from time to time, on the case website as part of the public materials in relation to this proceeding. Notwithstanding the foregoing, the Monitor shall have no liability in respect of the accuracy of or the timeliness of making any changes to the Service List.

51. **THIS COURT ORDERS** that the Applicants and the Monitor and their respective counsel are at liberty to serve or distribute this Order, and other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to the Applicants' creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or judicial obligation, and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/DORS).

GENERAL

52. **THIS COURT ORDERS** that the Applicants or the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

53. **THIS COURT ORDERS** that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Applicants, the Business or the Property.

54. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Applicants, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicants and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

55. **THIS COURT ORDERS** that each of the Applicants and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

56. **THIS COURT ORDERS** that any interested party (including the Applicants and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

57. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order.



Chief Justice Geoffrey B. Morawetz

ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF TREES CORPORATION, ONTARIO CANNABIS HOLDINGS CORP., MIRACULO INC., 2707461 ONTARIO LTD., OCH ONTARIO CONSULTING CORP., AND 11819496 CANADA INC.

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
Proceeding commenced at Toronto

AMENDED AND RESTATED INITIAL ORDER

Thornton Grout Finnigan LLP
3200 – 100 Wellington Street West
TD West Tower, Toronto-Dominion Centre
Toronto, ON M5K 1K7

Robert I. Thornton (LSO# 24266B)
Email: rthornton@tgf.ca

Mitchell W. Grossell (LSO# 69993I)
Email: mgrossell@tgf.ca

Derek Harland (LSO# 79504N)
Email: dharland@tgf.ca

Rudrakshi Chakrabarti (LSO# 86868U)
Email: rchakrabarti@tgf.ca

Tel: 416-304-1616
Fax: 416-304-1313

Lawyers for the Applicants

Appendix B

Endorsement of Chief Justice Morawetz dated January 8, 2024

CITATION: Trees Corporation, 2024 ONSC 30
COURT FILE NO.: CV-23-00711935
DATE: 2024-01-08

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF TREES CORPORATION, ONTARIO CANNABIS HOLDINGS CORP., MIRACULO INC., 2707461 ONTARIO LTD., OCH ONTARIO CONSULTING CORP., AND 11819496 CANADA INC.

Applicants

BEFORE: Chief Justice Geoffrey B. Morawetz

COUNSEL: *Robert Thornton, Derek Harland and Rushi Chakrabarti* for the Applicants

Maya Poliak, for CJ Marketing and Arthur Minh Tri Nguyen-Cao

William Skelly, for 606093 Saskatchewan Ltd., Minerva Investments Ltd., Echo Capital Growth Corporation, and PMH Investco Ltd.

David Bish, for Ernst & Young Inc., the Proposed Monitor

Daniel Richer and Dylan Chochla, for One Plant Retail Corp., Proposed DIP Lender

HEARD and

DETERMINED: January 2, 2024

REASONS: January 8, 2024

ENDORSEMENT

[1] On January 2, 2024, a revised form of ARIO was granted with reasons to follow. These are the reasons.

[2] On December 22, 2023, the Applicants sought and obtained relief under the *Companies' Creditors Arrangement Act* ("CCAA") pursuant to the Initial Order.

[3] The Initial Order, among other things:

(a) appointed Ernst & Young Inc. ("E&Y") as Monitor of the Applicants;

(b) granted an initial stay in favour of the Applicants and their Directors and Officers ("D&O's") up to January 2, 2024;

- (c) authorized the borrowing by the Applicants of up to \$60,000 from the DIP Lender at the interest rate of 15% per annum; and
- (d) granted the Administration Charge in the amount of \$450,000 and the D&O Charge in the amount of \$251,000, with \$100,000 of the Administration Charge being given super-priority status and the balance of the Administration Charge and the D&O Charge being ranked subsequent to the security interests of 606093 Saskatchewan Ltd., Minerva Investments Ltd., Echo Capital Growth Corporation, PMH Investco. Ltd., Tweed Inc. ("Tweed"), CJ Marketing Ltd. and Arthur Minh Tri Nguyen-Cao (collectively, the "Secured Creditors").

[4] On this comeback hearing the Applicants are seeking an Amended and Restated Initial Order (the "ARIO") granting among other things:

- (a) an extension of the Stay Period until and including February 29, 2024;
- (b) approving the execution by the Applicants of a debtor-in-possession term sheet (the "DIP Term Sheet"), dated December 21, 2023, with One Plant Retail Corp. (the "DIP Lender" or "One Plant"), pursuant to which the DIP Lender has agreed to advance to the Applicants a total of up to \$800,000 (the "DIP Facility") on the terms of the Revised DIP (as defined below), which will be made available to the Applicants during these CCAA proceedings;
- (c) authorizing the Applicants to take no further steps or incur further expenses in relation to the Securities Filings and declare that none of the D&Os, employees, and other representatives of the Applicants or the Monitor shall have any personal liability for any failure by the Applicants to make the Securities Filing;
- (d) postponing the requirement for any future annual general meeting ("AGM") of the shareholders of Trees during the CCAA Proceedings, and extending the time limit to call and hold such annual general meeting of shareholders until after the conclusion of the CCAA Proceedings; and
- (e) granting and increasing the amounts of the following Court-ordered priority charges (collectively, the "Charges) against the Property (ordered in priority):
 - (i) the Administration Charge the amount of \$100,000, with a subsequent Administration Charge that ranks behind the Secured Creditors in the amount of \$400,000;
 - (ii) the DIP Lender's Charge in the amount of \$1,100,000; and
 - (iii) the D&O Charge in the amount of \$100,000, with a Subsequent D&O Charge (the "Subsequent D&O Charge") that ranks behind the Secured Creditors and Subsequent Administration Charge respectively, in the amount of \$383,000.

[5] The Applicants take the position that the relief is necessary to finance the ongoing operations of the Applicants and the restructuring activities, during the CCAA proceedings, including the development and implementation of a Sale and Investment Solicitation Process (“SISP”). It is the intention of the Applicants to seek court approval of SISP as soon as possible.

[6] In addition to the foregoing, another issue arising from the Initial Order which remains outstanding, is whether E&Y should continue as Monitor.

[7] The requested relief is supported by the Monitor and the DIP Lender.

[8] The facts are set out in the initial affidavit of Jeffrey Holmgren sworn December 21, 2023 (the “Initial Affidavit”) and the second affidavit of Mr. Holmgren sworn December 29, 2023 (the “Second Holmgren Affidavit”). Additional information is set out in the Pre-filing Report of E&Y and the First Report of E&Y.

[9] At the outset, counsel to the Applicants indicated that the relief with respect to Securities Filings and the AGM was being deferred, as the regulatory body for the Applicants is the Alberta Securities Commission (the “ASC”) and not the Ontario Securities Commission. The ASC has yet to be served.

[10] During the initial CCAA hearing, the Secured Creditors (except Tweed) objected to certain relief sought by the Applicants. In response, the Applicants reserved approval of the DIP Term Sheet to this comeback hearing and agreed to have the D&O Charge and the Subsequent Administration Charge (as defined in the Initial Order) rank subsequent to the security interests of the Secured Creditors. Additionally, the DIP Lender’s Charge was limited to a maximum of \$60,000. The objections of these Secured Creditors have now been resolved.

[11] The Applicants stated that their financial difficulties were exacerbated by their existing secured loan obligations. The Applicants state that the *prima facie* first-ranking secured debt of Trees, as well as the *prima facie* Second Ranking Secured Debt of OCH, is in respect of loans made by former insiders of these companies, including a previous observer of the board of directors of Trees and to founders of OCH. The Applicants state that these loans are significant contributing factors to the non-viability of the Applicants moving forward without the relief offered by the CCAA. Furthermore, the Applicants state that historically, there has been considerable tension between the Applicants and these creditors because of these loans.

[12] The Applicants also state that, in the case of Trees, the holders of the Trees Secured Debentures (606093 Saskatchewan Ltd., Minerva Investments Ltd., Echo Capital Growth Corporation, PMH Investco Ltd.) are connected to Matt Hill, who was an observer on the board of directors of Trees and exercised significant influence over decisions made by the board. The Trees Secured Debentures contained an option to convert the debt into equity at a discounted rate once the company became public. The Trees Secured Debentures were issued at a time when Trees was implementing a strategy to go public (which Matt Hill initially supported). The high interest rate attributed to the Trees Secured Debentures was intended to be a short-term incentive to investors to make such investment and it was understood that the Trees Secured Debentures would be converted into equity once the option was crystallized.

[13] The Applicants also state that the high interest rate on the Trees Secured Debentures created an untenable situation as the accrued interest on these loans greatly exceeds the underlying principal amount and continues to grow at a significantly beyond-market and near-usurious rate. The transaction giving rise to the Trees Secured Debentures occurred in 2021.

[14] On December 29, 2023, the secured debt of Tweed was assigned to the current DIP Lender, One Plant (the "Tweed Assignment"). Furthermore, Tweed was party to subordination agreements with CJ Marketing Ltd. and Arthur Minh Tri Nguyen-Cao (the "Subordination Agreements"). The Subordination Agreements allow Tweed to assign the debt to a third-party – in this case One Plant – without notice and the third party may rely on the Subordination Agreement as if it were initially a party thereto.

[15] In order to fund the operations of the Applicants during the CCAA proceedings, the Applicants seek to utilize DIP Financing. Initially there were two parties who were prepared to provide DIP Financing. The Applicants received an offer from the Secured Creditors (except for Tweed) for 1181798 B.C. Ltd. ("118 B.C.") to provide a DIP Facility. This was in addition to the proposal provided by the existing DIP Lender. In response to the 118 B.C. DIP, the Monitor requested both 118 B.C. and the existing DIP Lender to make their best offer to provide the DIP Facility by 11:00 a.m. on December 29, 2023.

[16] On December 29, 2023, the Applicants received a DIP proposal from the existing DIP Lender that provided the DIP Facility on the same terms as the DIP Term Sheet except: (i) the commitment fee of \$50,000 was no longer required, and (ii) there would be no interest assessed on the DIP Facility (the "Revised DIP").

[17] In the Applicants' view, the Revised DIP is in the best interests of the Applicants and is economically superior to the 118 B.C. DIP.

[18] Pursuant to the DIP Term Sheet, the DIP Facility must be repaid in full by the date that is the earliest of:

- (a) the Maturity Date of February 29, 2024;
- (b) the closing of a transaction;
- (c) any Order made by the Court replacing E&Y as Monitor;
- (d) the date on which the CCAA proceedings are terminated; and
- (e) the occurrence of an Event of Default (as defined in the DIP Term Sheet).

[19] The Applicants seek to approve the execution of the DIP Term Sheet and increase the maximum amount that they can borrow under the DIP Term Sheet to \$800,000 and increase the amount of the DIP Lender's Charge to \$1.1 million.

[20] The updated Cash Flow Forecast ("Cash Flow Forecast") indicates that the Applicants will not have sufficient liquidity to fund operations through the requested Stay Period without the use of the DIP Facility.

[21] In its Factum, the Applicants set out the issues in respect of the relief being sought, namely whether:

- (a) the Stay Period should be extended to and including February 29, 2024;
- (b) the DIP Term Sheet should be approved, pursuant to which the Applicants should be permitted to draw up to \$800,000, and court approval should be given to grant an increase to the DIP Lender's Charge up to \$1,100,000;
- (c) approval should be given to increase the priorities and amounts, as applicable, of the Charges against the Property.

[22] As noted above, in addition to the foregoing, this hearing was also to address the issue of whether E&Y should continue as Monitor.

[23] The basis for the extension of the Stay Period is set out at paragraphs 43 – 48 of the Applicants' Factum. I am satisfied that the Applicants have acted and are continuing to act in good faith and with due diligence such that the request to extend the Stay Period to February 29, 2024 is reasonable in the circumstances and the extension is granted. In arriving at this conclusion, I have taken into account that with access to the DIP Facility, the Applicants will have sufficient liquidity during the extension of the Stay Period.

[24] The basis for the approval of the DIP Term Sheet and the DIP Lender's Charge is set out at paragraphs 49 – 60 of the Factum. I accept the submissions set out by the Applicants. I am satisfied that the necessary tests for approval of the DIP Term Sheet and the DIP Lender's Charge have been satisfied and the relief is appropriate in the circumstances and is granted.

[25] The basis for the approval of the priority and increase to court ordered Charges is set out at paragraphs 66 – 73 of the Factum. I am satisfied that the relief is appropriate in the circumstances and is granted.

[26] The remaining issue to be considered is whether E&Y should continue as Monitor. On this comeback hearing, this issue is to be considered afresh.

[27] The appointment of the monitor requires a consideration of the provisions of section 11.7 of the CCAA, which provides:

11.7(1) When an order is made on the initial application in respect of a debtor company, the court shall at the same time appoint a person to monitor the business and financial affairs of the company. The person so appointed must be a trustee, within the meaning of subsection 2(1) of the *Bankruptcy and Insolvency Act*.

(2) Except with the permission of the court and on any conditions that the court may impose, no trustee may be appointed as monitor in relation to a company

- (a) if the trustee is or, at any time during the two preceding years, was

...

- (iii) the auditor, accountant or legal counsel, or a partner or an employee of the auditor, accountant or legal counsel, of the company, or

...

(3) On application by a creditor of the company, the court may, if it considers it appropriate in the circumstances, replace the monitor by appointing another trustee, within the meaning of subsection 2(1) of the *Bankruptcy and Insolvency Act*, to monitor the business and financial affairs of the company.

[28] E&Y consented to act as monitor subject to court approval. E&Y is a related party to Ernst and Young LLP. Ernst & Young LLP was the auditor for the Applicants for the audited financial statements dated December 31, 2021. Ernst & Young LLP resigned as auditor on May 10, 2022, which date is within the restricted period described in ss.11.7(2)(a) of the CCAA.

[29] The Applicants submit that permission should be granted by the court for E&Y to continue as Monitor for the following reasons:

- (a) E&Y has assisted the Applicants to the CCAA Proceedings and is familiar with the Applicants' assets and business;
- (b) E&Y has acquired extensive and in-depth existing knowledge and understanding of the Applicants' cannabis business, the cannabis sector and the cannabis retail sector;
- (c) to prevent E&Y to act as Monitor would only increase the professional costs, to the detriment of the Applicants' restructuring process and its stakeholders; and
- (d) given the financial constraints, there is a need to proceed expeditiously with the restructuring on a cost-effective basis.

[30] In its Pre-filing Report, E&Y states that it is qualified to act as monitor. E&Y notes that, while it meets the requirements of ss. 11.7(1) of the CCAA, it is subject to one of the restrictions set out in ss. 11.7(2) of the CCAA, in that Ernst & Young LLP, an affiliate of E&Y, previously acted as Tweeds' auditor in the two-year period prior to the CCAA application.

[31] E&Y has confirmed that:

- (a) Ernst & Young LLP no longer acts as auditor to any of the Applicants and has not acted as such in over 19 months;
- (b) None of the members of E&Y working or expected to work on the Monitor engagement had any involvement in the prior audit work;

- (c) E&Y and Ernst & Young LLP have put in place measures to ensure confidentiality and to prevent any disclosure of information between their respective representatives;
- (d) E&Y is not aware of any conflict of interest or loss of independence arising from Trees' prior relationship with Ernst & Young LLP as its auditor, and it does not believe that the former audit role creates any real or perceived reasonable apprehension of bias or impartiality on the part of E&Y as Proposed Monitor; and
- (e) E&Y consents to act as Monitor of these proceedings.

[32] E&Y submitted a Factum in support of its position. E&Y emphasizes the following points:

- (i) The CCAA does not prohibit a person from acting as monitor where it was formerly the auditor of an applicant. Rather, it permits this to occur but subjects it to express judicial scrutiny to ensure that it is appropriate where the audit engagement was recent. Section 11.7(2) reflects that there will be times and circumstances in which a former auditor can and should be permitted to act as monitor, and nothing in that section indicates that it should only occur sparingly or in exceptional circumstances; rather, simply that this scenario calls for additional judicial scrutiny;
- (ii) the objective of section 11.7(2) is not to bar former auditors from acting as monitors but rather to ensure the integrity of the insolvency process is maintained in that circumstance and to bar former auditors from acting only where doing so threatens that integrity;
- (iii) there are numerous instances in which former auditors or affiliates of former auditors have been permitted to act as monitors in CCAA proceedings;
- (iv) the final period that E&Y LLP audited was for the year ended December 31, 2021, and the Applicants do not reference or rely on the audited financial statements from that period in the CCAA proceedings. There is no reasonable basis to expect that E&Y LLP's previous role will give rise to a reasonable apprehension of bias;
- (v) E&Y is the best-positioned firm to act as monitor due to, among other reasons, its work to date on this engagement and its extensive subject matter expertise in the cannabis sector.

[33] E&Y submits that: (i) the overriding objective ss. 11.7(2) of the CCAA is the preservation of the integrity of the insolvency process; that is, to provide public confidence that the insolvency system is impartial; (ii) the overriding duty of the monitor engaged by its appointment is to act with professional neutrality, and to scrupulously avoid placing itself in a position a potential or actual conflict of interest; and (iii) as a result of the two foregoing considerations, a key consideration for the court in determining whether to permit a former auditor to act as monitor is

whether the facts of the case before it raise a reasonable apprehension of bias or conflict of interest, either real or perceived.

[34] E&Y submits that the courts to date have been willing to approve with “little fanfare” the appointment of a monitor that was an auditor or an affiliate of an auditor that acted in the two preceding years. Reference was made to *Re Divaltex Inc. et al.*, Court File No. 200–11–028987–231 (Sup. Ct. Q. (Commercial Division)), December 14, 2023; *Re Kaisen Energy Corp.*, Court File No. 2101–14684 (Ct. Q.B. Alta.) December 20, 2021; *Re The Aldo Group Inc. et al.*, Court File No. 500–11–058644–200 (Sup. Ct. Q. (Commercial Division)) May 6, 2020; *Re Ernest Enterprises (MTL) Ltd./Les Entreprises Ernest (MTL) Ltée*, Court File No. 500–11–058761–202 (Sup. Ct. Q. (Commercial Division)) Club (September 14, 2020; *Lutheran Church – Canada, Re*, 2016 ABQB 419 (*Lutheran*); *Fonderie Poitres Ltée, Re*, 2009 QCCS 547; *Hickman Equipment (1985) Ltd., Re* (2002), 34 C.B.R. (4th) 203 (Nfld. T.D.) (*Hickman*).

[35] I note that in virtually all of these cases, there was no or very limited analysis or commentary with respect to the current version of ss. 11.7(2).

[36] In *Lutheran*, consulting services had been provided by a related entity to the monitor, but no audit function had been provided for sixteen years. Accordingly, the ss. 11.7(2) restrictions were not engaged. In addition, the application to replace the monitor was brought after the time when the last two plans of arrangement had been approved by the requisite double majority of creditors. Romaine J. (at 102) stated she was of the view that the application was strategic.

[37] *Hickman* was decided pursuant to a predecessor version of ss.11.7(2) which provided:

- (2) Except as may be otherwise directed by the court, the auditor of the company may be appointed as the monitor.

[38] In addition, (at 49) Hall J. stated that no creditor actually took the step of formally asking the court to remove the monitor.

[39] In my view, both *Lutheran* and *Hickman* are of no real assistance to the Applicants or E&Y.

[40] Despite the very able argument of Mr. Bish on behalf of E&Y, I am unable to conclude that it is appropriate to appoint E&Y as Monitor in these circumstances.

[41] I do not question the integrity or the professionalism of E&Y to act as Monitor in these proceedings. However, I do take a different approach to the application of ss. 11.7(2) of the CCAA.

[42] In my view, the starting point is to acknowledge that the current ss. 11.7(2), which came into effect in 2009, is more restrictive than the previous version.

[43] The predecessor version provided that the auditor of the company may be appointed as the monitor.

[44] The current version no longer expresses this position in positive language. Rather, except with permission of the court, the appointment of an auditor or former auditor within two years, cannot be made.

[45] The current statutory provision requires the court to override the negative wording in ss. 11.7(2) – or to put it another way – the auditor or former auditor within the two preceding years is not to be appointed as monitor, except with permission of the court. This is the general rule. Mr. Bish acknowledged that he did not disagree with this interpretation.

[46] With this starting point, there have to be extenuating circumstances that would justify the appointment or the continuation of the appointment of E&Y as Monitor. The reasons provided by the Applicant do not persuade me that E&Y should continue as Monitor. With respect to the submissions of E&Y, I have also not been persuaded that it is appropriate to continue with the appointment of E&Y as Monitor.

[47] In addressing the points put forth by Mr. Holmgren, I find that at best, the arguments are self-serving.

[48] The Applicants knew or ought to have known of the restrictions set out in ss. 11.7(2) at the time they commenced preparations for these proceedings. Notwithstanding the restriction, a decision was made by the Applicants to proceed with an attempt to appoint E&Y as Monitor. Having made this decision, it is both artificial and contradictory for the Applicants to take the position that E&Y's role in preparing for the CCAA proceedings makes them familiar with the Applicants' assets and business which would be of benefit to the Applicants in the CCAA proceedings. Had the Applicants made a decision to engage another insolvency professional, the alternative professional would have become familiar with the Applicants' assets and business.

[49] With respect to the submission that the proposed Monitor has acquired an extensive and in-depth existing knowledge and understanding of the Applicants' cannabis business, the cannabis sector and the cannabis retail sector, I take judicial notice that, in the last few years, there have been numerous insolvencies of cannabis entities and a number of different insolvency professionals have been involved in these files. As a result, other insolvency firms have developed a fundamental understanding of the cannabis sector and the cannabis retail sector. The field of competent monitors for the cannabis sector is not restricted to E&Y.

[50] With respect to the submission that to prevent E&Y to act as monitor would only increase the professional costs, to the detriment of the Applicants, the restructuring process and its stakeholders, this argument ignores the fact that it was the Applicants who made the decision to proceed in the manner in which they did. It does not assist the Applicants, in my view, to create a factual matrix and then request the court to exercise its discretion to override the ss. 11.7(2) restrictions to appoint the Monitor in these circumstances.

[51] With respect to the arguments that there was a need to proceed expeditiously, this was recognized at the time of the Initial Order was granted and which appointed E&Y as Monitor on December 22, 2023. The appointment of E&Y as a Monitor was made with the understanding that it would be reviewed at the comeback hearing.

[52] Furthermore, I note that it was the Applicants who raised concerns with certain loan transactions which are referenced at [11] to [13]. These transactions were entered into when E&Y LLP was the auditor. I have no information as to whether any concerns will be raised with respect

to these transactions. However, it is, in my view, necessary to avoid any appearance of conflict if it becomes necessary to review these transactions.

[53] With respect to the submission of E&Y, I agree that ss. 11.7(2) does not prohibit a former auditor from acting as monitor. This is a plain reading of the statutory provision. I also accept that E&Y, at this time, is not aware of any real or perceived apprehension of bias or impartiality that is created by the former auditor role.

[54] However, I am not convinced that the representations of E&Y are significant in my assessment of the issue. I can understand that E&Y would like to receive this engagement, but, in my view, business aspirations are not a factor to be taken into account.

[55] In summary, it is a base line requirement that the monitor be independent and not be in a position of real or perceived conflict. This is a pre-requisite for any appointment. However, in assessing whether to exercise my discretion to continue the appointment of E&Y as Monitor, in the face of the ss. 11.7(2) CCAA restriction, I have taken into consideration the following:

- (i) Recognizing that ss. 11.7(2) which provides that the appointment of an auditor or former auditor is an exception to the rule, are there any extenuating or unique circumstances that would cause the court to exercise its discretion to appoint the former auditor as monitor. In this issue, there are none;
- (ii) A factual matrix created by the Applicants that the auditor or former auditor has obtained the knowledge to perform the role should be regarded with extreme caution;
- (iii) The extent of service of materials on affected parties has been limited. In view of the holiday season, there may be affected parties who have yet to become aware of these proceedings; and
- (iv) There are transactions entered into during the ss. 11.7(2) restricted period that may have to be reviewed.

[56] In the result, I have not been persuaded that it is appropriate to exercise my discretion to appoint or continue with the appointment of E&Y as Monitor. In view that this is a comeback hearing, and this issue is being considered afresh, this decision is not being made pursuant to ss.11.7(3) of the CCAA.

[57] I understand that FTI Consulting Canada Inc. ("FTI") has consented to act as monitor. FTI is accordingly appointed as Monitor.

[58] I also note that Mr. Richer, on behalf of the DIP Lender represented that his client agreed to delete the repayment clause referenced in 16(c) to the effect that the DIP Facility must be repaid in the event of an order being issued replacing E&Y as Monitor.

[59] An order reflecting the foregoing has been signed and entered.



Chief Justice Geoffrey B. Morawetz

Date: January 8, 2024

Appendix C

SISP

SALE AND INVESTOR SOLICITATION PROCESS

On December 22, 2023, Trees Corporation (“**Trees**”), Ontario Cannabis Holdings Corp. (“**OCH**”), Miraculo Inc. (“**Miraculo**”), 2707461 Ontario Ltd. (“**270**”), OCH Ontario Consulting Corp. (“**Ontario Consulting**”), and 11819496 Canada Inc. (“**118**” and, collectively, the “**Companies**”) commenced proceedings (the “**CCAA Proceedings**”) under the *Companies’ Creditors Arrangement Act* (Canada) (the “**CCAA**”) before the Ontario Superior Court of Justice (Commercial List) in the City of Toronto (the “**Court**”) pursuant to an order granted by the Court on the same day.

On January 2, 2024, the Companies obtained an Amended and Restated Initial Order (as may be further amended or restated from time to time, the “**ARIO**”) from the Court. The ARIO provides, among other things, an extension of the Stay Period (as defined therein) until February 29, 2024, which may be extended by the Court from time to time. Pursuant to the ARIO, FTI Consulting Canada Inc. was appointed as monitor in the CCAA Proceedings (in such capacity, the “**Monitor**”).

On January 29, 2024, the Court granted an order (the “**SISP Order**”) that, among other things: (a) approved this sale and investor solicitation process (the “**SISP**”), and (b) authorized the execution by the Companies of the stalking horse share purchase agreement between Trees and the Stalking Horse Bidder (as defined below) dated January 23, 2024 (the “**Stalking Horse Agreement**”) as the stalking horse bid for the purpose of conducting the SISP.

The purpose of the SISP is to identify one or more financiers for, purchasers of and/or investors in the Companies, the Business and/or Assets (each as defined below) to make an offer (each a “**Bid**”) that is superior to the offer contemplated by the Stalking Horse Agreement, and to complete the transactions contemplated by any such offer, or the Stalking Horse Agreement if no other offers are accepted. Set forth below are the procedures (the “**SISP Procedures**”) that shall govern the SISP and any transactions consummated as a result thereof.

1. Defined Terms

The following capitalized terms have the following meanings when used in this SISP:

“**Acknowledgment of the SISP**” means an acknowledgment of the SISP in the form attached as Schedule “A”;

“**Additional Confidential Information**” means commercially sensitive information with respect to the Companies, the Business and/or Assets, which may include copies of material customer and vendor agreements, details of the equity and capital structure of the Business, and meetings with management and key employees;

“**Aggregate Bid**” means a combination of Portion Bids that do not overlap for Assets sought to be purchased, and which, when totalled, equal or exceed the Minimum Bid Amount;

“**Assets**” means the assets, undertakings and property of the Companies;

“**Auction**” has the meaning given to it in Section 15;

“**Auction Procedure**” has the meaning given to it in Section 15;

“**Back-Up Bid Expiration Date**” has the meaning given to it in Section 19;

“**Back-Up Bid**” has the meaning given to it in Section 15;

“**Back-Up Bidder**” has the meaning given to it in Section 15;

“**Bid**” has the meaning given to it in the introduction;

“**Break Fee**” has the meaning given to it in Section 2;

“**Business**” means the business carried on by the Companies, which consists primarily of the operation of cannabis retail stores and the marketing and sale of cannabis products and accessories;

“**Business Day**” means any day, other than a Saturday, Sunday or statutory holiday in the Province of Ontario, on which commercial banks in Toronto, Ontario are open for business;

“**Companies**” has the meaning given to it in the introduction;

“**Confidentiality Agreement**” means the confidentiality agreement, upon terms satisfactory to the Companies, with the consent of the Monitor, entered into between the Companies and an Interested Party;

“**Court**” has the meaning given to it in the introduction;

“**Data Room**” means an electronic data room created and maintained by the Companies or the Monitor containing confidential information in respect of the Companies, the Business and the Assets, but which does not contain the Additional Confidential Information;

“**DIP Lender**” means One Plant (Retail) Corp.;

“**DIP Term Sheet**” means the debtor-in-possession financing term sheet dated December 21, 2023, as amended and restated on January 23, 2024, between the Companies, as borrowers, and the DIP Lender, as lender;

“**Form Purchase Agreement**” means the template share purchase agreement posted in the Data Room substantially in the form of the Stalking Horse Agreement;

“**Interested Party**” has the meaning given to it in Section 2;

“**Investment Proposal**” has the meaning given to it in Section 9;

“**Known Potential Bidders**” has the meaning give to it in Section 5(a);

“**Minimum Bid Amount**” means the Purchase Price under the Stalking Horse Agreement, including the Credit Bid Consideration, the Pre-Filing GST/HST Obligations, and the Cash Consideration, plus: (a) the Break Fee, and (b) CAD\$50,000. For greater certainty, as of the Phase II Bid Deadline, the Minimum Bid Amount is estimated to be CAD\$3,638,192.08.

“**Monitor**” has the meaning given to it in the introduction;

“**Notice**” has the meaning given to it in Section 5(b);

“**Outside Date**” means April 30, 2024, or such other date as the Companies, the Monitor, and the Successful Bidder(s) or the Back-Up Bidder, if applicable, may agree, acting reasonably;

“**Phase I Bid**” means an initial non-binding Bid submitted by an Interested Party pursuant to Section 9 hereof;

“**Phase I Bid Deadline**” has the meaning given to it in Section 9;

“**Phase I Bidder**” means a bidder submitting a Phase I Bid;

“**Phase I Deposit**” has the meaning given to it in Section 11(i);

“**Phase I Participant Requirements**” has the meaning given to it in Section 10 hereof;

“**Phase II Bid**” means a binding unconditional Bid submitted by a Qualified Phase I Bidder;

“**Phase II Bidder**” means a bidder submitting a Phase II Bid;

“**Phase II Bid Deadline**” has the meaning given to it in Section 9;

“**Portion Bid**” means a Bid for less than all, or substantially all of the Assets, that is otherwise a Qualified Phase I Bid or a Qualified Phase II Bid;

“**Portion Bidder**” means a Qualified Phase I Bidder and/or a Qualified Phase II Bidder that submits a Portion Bid;

“**Pre-Filing GST/HST Obligations**” has the meaning given to it in the Stalking Horse Agreement;

“**Purchase Price**” has the meaning given to it in Section 11(a)(i);

“**Qualified Phase I Bid**” means a Phase I Bid that satisfies the conditions set out in Section 11. For greater certainty, a Portion Bid may be a Qualified Phase I Bid if it forms part of an Aggregate Bid;

“**Qualified Phase I Bidder**” means a bidder submitting a Qualified Phase I Bid;

“**Qualified Phase II Bid**” means a Phase II Bid that satisfies the conditions set out in Section 14. For greater certainty, a Portion Bid may be a Qualified Phase II Bid if it forms part of an Aggregate Bid;

“**Qualified Phase II Bidder**” means a bidder submitting a Qualified Phase II Bid;

“**Qualified Investment Bid**” is an Investment Proposal that is determined to be a Qualified Phase II Bid by the Companies and the Monitor pursuant to Section 14;

“**Qualified Sale Bid**” is a Sale Proposal that is determined to be a Qualified Phase II Bid by the Companies and the Monitor pursuant to Section 14;

“**Sale Approval Hearing**” has the meaning given to it in Section 18;

“**Sale Proposal**” has the meaning given to it in Section 9;

“**SISP**” has the meaning given to it in the introduction;

“**SISP Procedures**” has the meaning given to it in the introduction;

“**Stalking Horse Agreement**” has the meaning given to it in the introduction;

“**Stalking Horse Bidder**” means the DIP Lender, or an affiliate thereof;

“**Successful Bid**” has the meaning given to it in Section 15;

“**Successful Bidder**” has the meaning given to it in Section 15; and

“**Teaser Letter**” has the meaning given to it in Section 5(c).

2. **The SISP Procedures**

The SISP shall consist of two phases. In the first phase, any interested party (an “**Interested Party**”) that meets the preliminary participant requirements set out herein, including executing a Confidentiality Agreement and an Acknowledgment of the SISP, shall be provided with access to the Data Room in order to prepare and submit a Phase I Bid by the Phase I Bid Deadline. Phase I Bidders that are determined by the Companies, with the consent of the Monitor, to be Qualified Phase I Bidders shall be invited to participate in the second phase wherein they will be given access to the Additional Confidential Information, if any, in order to complete diligence prior to submitting a Phase II Bid by the Phase II Bid Deadline.

The Companies, in consultation with the Monitor, shall supervise the SISP Procedures and each will generally consult with the other in respect of all matters arising out of this SISP. The Monitor shall direct and preside over the Auction, if applicable. In the event that there is disagreement as to the interpretation or application of this SISP, the Court will have the jurisdiction to hear and resolve such dispute.

Certain bid protections are provided for in the Stalking Horse Agreement (including a break fee (the “**Break Fee**”), subject to the conditions set forth therein. No other bidder may request or receive any form of bid protection as part of any bid made pursuant to the SISP.

3. “As Is, Where Is”

The sale of the Business or all or any part of the Assets or an investment in the Companies will be on an “as is, where is” basis and without surviving representations or warranties of any kind, nature or description by the Companies, the Monitor or any of their respective employees, officers, directors, agents or advisors, except to the extent set forth in the relevant definitive Sale Proposal or Investment Proposal agreement, as applicable, with a Successful Bidder.

By participating in this process, each Interested Party is deemed to acknowledge and represent that it has had an opportunity to conduct any and all due diligence regarding the Business, the Assets or the Companies prior to making its Bid, that it has relied solely on its own independent review, investigation, and/or inspection of any documents and/or regarding the Business, the Assets or the Companies in making its Bid, and that it did not rely on any written or oral statements, representations, promises, warranties, conditions or guaranties whatsoever, whether express, implied, by operation of law or otherwise, regarding the Business, the Assets or the Companies or the completeness of any information provided in connection therewith, except as expressly stated in the terms of any definitive transaction documents.

4. Timeline

The following table sets out the key milestones under the SISP:

Milestone	Deadline
Commencement of SISP	January 29, 2024
Distribution of the Notice, Teaser Letter Confidentiality Agreement and Acknowledgement of SISP	As soon as reasonably practicable following the date on which the SISP Order is granted
Phase I Bid Deadline (5:00 PM (Eastern Time))	February 29, 2024

Phase II Bid Deadline (5:00 PM (Eastern Time))	March 15, 2024
Selection of Successful Bid(s), Back-Up Bid(s), or Notification of Auction (if any)	March 19, 2024
Auction (if any)	No later than March 22, 2024
Sale Approval Hearing	As soon as practicable
Closing Date Deadline	A maximum of 4 weeks after the Sale Approval Hearing, but by no later than the Outside Date

5. Solicitation of Interest

As soon as is reasonably practicable:

- (a) the Companies and the Monitor will prepare a list of potential bidders, including (i) parties that have approached the Companies or the Monitor indicating an interest in the opportunity; and (ii) strategic parties whom the Companies or the Monitor believe may be interested in purchasing all or part of the Business and Assets, or investing in the Companies, pursuant to the SISP (collectively, “**Known Potential Bidders**”);
- (b) the Monitor, with the assistance of the Companies, will cause a notice of the SISP and such other relevant information that the Companies, with the consent of the Monitor, consider appropriate (the “**Notice**”) to be published in *The Globe and Mail* (National Edition) and *Insolvency Insider*, and any other newspaper, journal or industry publication as the Companies and the Monitor consider appropriate, if any; and
- (c) the Monitor, in consultation with the Companies, will prepare: (i) a process summary (the “**Teaser Letter**”) describing the opportunity, outlining the process under the SISP, and inviting recipients of the Teaser Letter to express their interest pursuant to the SISP; and (ii) a Confidentiality Agreement, in each case in form and substance satisfactory to the Companies and the Monitor.

The Monitor, with the assistance of the Companies, will publish the Notice and send the Teaser Letter, Confidentiality Agreement, and Acknowledgement of the SISP to all Known Potential Bidders as soon as reasonably practicable following the date on which the SISP Order is granted and to any other party who requests a copy of the Teaser Letter, Confidentiality Agreement, and Acknowledgement of the SISP, or who is identified to the Companies or the Monitor as a potential bidder, as soon as reasonably practicable after such request or identification, as applicable.

6. Role of Management of the Companies

In the event that any party that is associated with the Board of Directors or management of the Companies intends to submit a Bid pursuant to the SISP, any such party must advise the Monitor of such intention in writing by February 5, 2024. Any such party(ies) shall be entitled to participate in the SISP as an Interested Party, provided that, and only to the extent that, such party(ies) shall: (i) be excluded from participating in the SISP in any manner or capacity that would be reasonably likely to create an unfair advantage for any party or otherwise jeopardize the integrity of the SISP, as determined by the Monitor in its sole discretion; and (ii) be subject to such restrictions as the Monitor, in its sole discretion, determines to be necessary to ensure compliance with (i).

7. Role of the Monitor

The Monitor's responsibilities pursuant to the SISP include:

- (a) consulting with the Companies in connection with the bidding procedures included in this SISP and the closing of the transaction contemplated in the Successful Bid(s);
- (b) assisting the Companies with supervision of the SISP Procedures;
- (c) reporting to the Court in connection with the SISP Procedures, including the bidding procedures described in this SISP, and the closing of the transaction contemplated in the Successful Bid(s);
- (d) conducting an Auction, if necessary, in accordance with the Auction Procedures attached hereto as Schedule "C"; and
- (e) assisting the Companies to facilitate information requests, including assisting the Companies in preparing or modifying financial information to assist with the bidding procedures described in this SISP and the closing of the transaction contemplated in the Successful Bid(s) (including the Stalking Horse Agreement).

8. Access to Due Diligence Materials

Only Interested Parties that satisfy the Phase I Participant Requirements will be eligible to receive access to the Data Room. If the Companies, with the consent of the Monitor, determine that a Phase I Bidder does not constitute a Qualified Phase I Bidder, then such Phase I Bidder shall not be eligible to receive the Additional Confidential Information, if any. For greater certainty, the Data Room shall not contain the Additional Confidential Information and the Companies or the Monitor shall provide the Additional Confidential Information to a Qualified Phase I Bidder by alternative means.

The Monitor, with the assistance of the Companies, will be responsible for the coordination of all reasonable requests for additional information and due diligence access from Interested Parties. Neither the Companies nor the Monitor shall be obligated to furnish any additional due diligence information after the Phase I Bid Deadline other than the Additional Confidential Information, if any, to Qualified Phase I Bidders before the Phase II Bid Deadline. Neither the Companies nor the Monitor shall be obligated to furnish any

due diligence information after the Phase II Bid Deadline, provided however that the Companies and the Monitor may, but are not obligated to, provide further information including, without limitation, financial information to the Successful Bidder (including the Stalking Horse Bidder). Neither the Companies nor the Monitor are responsible for, and will bear no liability with respect to, any information obtained by any party in connection with the sale of the Assets and the Business, or an investment in the Companies. If the Companies provide additional information and due diligence to an Interested Party that was not previously provided to the Stalking Horse Bidder, the Companies shall concurrently provide such additional information to the Stalking Horse Bidder or notify the Stalking Horse Bidder that such information is available in the Data Room.

9. Bid Deadlines

An Interested Party that wishes to make a Bid to: (a) acquire the Business or all, substantially all or any part of the Assets, including any offer to acquire some or all of the Companies' intellectual property, accounts receivable and furniture, fixtures and equipment (a "**Sale Proposal**"); or (b) make an investment in the Companies by way of private issuances, sale or placement of newly issued or treasury equity, equity-linked or debt securities, instruments or obligations of the Companies with one or more lenders and/or investors or security holders (an "**Investment Proposal**"), must deliver an executed copy of a Phase I Bid to the Monitor, at the email address specified in Schedule "B", so as to be received by it **not later than 5:00 p.m. (Eastern Time) on February 29, 2024**, or such other later date or time as may be agreed by the Companies and the Monitor (the "**Phase I Bid Deadline**").

All Phase II Bids must be submitted to the Monitor, at the email address specified in Schedule "B", so as to be received by it **not later than 5:00 p.m. (Eastern Time) on March 15, 2024**, or such other later date or time as may be agreed by the Companies and the Monitor (the "**Phase II Bid Deadline**").

PHASE I – NON BINDING BIDS

10. Phase I Participant Requirements.

To participate in Phase I of the SISP and to otherwise be considered for any purpose hereunder, each Interested Party must provide the Companies and the Monitor with an executed copy of each of the following prior to being provided with access to the Data Room: (i) a Confidentiality Agreement; and (ii) an Acknowledgement of the SISP (collectively, the "**Phase I Participant Requirements**").

11. Qualified Phase I Bids

Only Qualified Phase I Bidders shall be allowed to participate in Phase II of the SISP and be eligible to receive the Additional Confidential Information, if any.

In order for the Companies, with the consent of the Monitor, to determine whether an Interested Party is a Qualified Phase I Bidder, the Interested Party must provide, in form and substance satisfactory to the Companies and the Monitor, each of the following on or

before the Phase I Bid Deadline:

- (a) Non-Binding Letter of Intent Describing the Phase I Bid: A non-binding letter of intent describing the material terms of the Phase I Bid, which includes the following information:
 - (i) Sale Proposal: In the case of a Sale Proposal, the material terms and conditions of the proposed transaction, including identification of the Business or the Assets proposed to be acquired, the obligations to be assumed, the purchase price for the Business or Assets proposed to be acquired (the “**Purchase Price**”), and the structure and financing of the proposed transaction; and
 - (ii) Investment Proposal: In the case of an Investment Proposal, the material terms and conditions of the proposed transaction, including details regarding the proposed equity and debt structure of the Companies following completion of the proposed transaction, the direct or indirect investment target and the aggregate amount of equity and debt investment (including the sources of such capital, the underlying assumptions regarding the *pro forma* capital structure, as well as anticipated tranches of debt, debt service fees, interest and amortization) to be made in the Companies, and the debt, equity, or other securities, if any, proposed to be allocated to creditors of the Companies;
- (b) Purchase Price: Evidence that the Purchase Price (in the case of a Sale Proposal) or imputed value (in the case of an Investment Proposal) under the Phase I Bid or Aggregate Bid shall be an amount equal to or greater than the Minimum Bid Amount (a “**Superior Offer**”); provided that any Portion Bidder shall not be subject to the Minimum Bid Amount except to the extent that it forms part of an Aggregate Bid. For greater certainty, any Phase I Bid must provide for payment in full in cash on closing in an amount sufficient to satisfy all indebtedness, fees, and expenses owed by the Applicants to the DIP Lender in accordance with the DIP Term Sheet and all other indebtedness, fees, and expenses owed by the Applicants to the DIP Lender in connection with any first-ranking secured debt of the Applicants held by the DIP Lender or its nominees or Affiliates. Relevant information in this regard will be contained in the Data Room;
- (c) Proof of Financial Ability to Perform: Written evidence upon which the Companies and the Monitor may reasonably conclude that the Interested Party has obtained, or shall obtain on or before the Phase II Bid Deadline, the necessary sources of financing that it shall require to close the contemplated transaction on or before the Outside Date, including, without limitation: (i) the sources of such financing and contact names and phone numbers required to verify same; and (ii) any such other form of financial disclosure or credit-quality support information or enhancement requested by and reasonably acceptable to the Companies and the Monitor demonstrating that the Phase II Bidder has, or will have, the ability to close the contemplated transaction;

- (d) Outstanding Due Diligence: a description of any additional due diligence required to be conducted in order to submit a Qualified Phase II Bid and the impact any additional due diligence may have on the final Purchase Price or imputed value;
- (e) Identification: Full written disclosure of the identity of each person (including any person that controls such person) that will be directly or indirectly sponsoring or participating in the Phase I Bid, including whether any prior or current member of the Companies' board, management, any employee or consultant to the Companies or any creditor) or shareholder of the Companies is involved in any way with the Phase I Bid or assisted with the Phase I Bid, and the complete terms of any such participation as well as evidence of corporate authority to sponsor or participate in the Phase I Bid;
- (f) Acknowledgment: An acknowledgement and representation that the Interested Party: (i) has relied solely upon its own independent review, investigation and/or inspection of any documents regarding the Companies, the Business and/or the Assets to be acquired, or the liabilities to be assumed in making its Phase I Bid; and (ii) did not rely upon any written or oral statements, representations, promises, warranties conditions or guaranties whatsoever, whether express or implied (by operation of law or otherwise) by the Companies, the Monitor or any of their respective employees, directors, officers, agents, advisors or other representatives, regarding the Companies, the Business, the Assets to be acquired, or the liabilities to be assumed, or the completeness of any information provided in connection therewith, except as expressly provided in any definitive transaction documents;
- (g) Authorization: Evidence, in form and substance reasonably satisfactory to the Companies and the Monitor, of authorization and approval from the Interested Party's board of directors (or comparable governing body) with respect to the submission, execution and delivery of the Phase I Bid, and identification of any anticipated shareholder, regulatory or other approvals outstanding, and the anticipated time frame and any anticipated impediments for obtaining such approvals;
- (h) No Break or Termination Fee: Evidence that the Phase I Bid does not include any request for or entitlement to any break or termination fee, expense reimbursement or similar type of payment, and confirmation that the Interested Party shall be responsible for all of its costs and expenses associated with conducting due diligence and submitting a Bid;
- (i) Deposit: A cash deposit (the "**Phase I Deposit**") in an amount equal to 10% of the Purchase Price (in the case of a Sale Proposal) or imputed value (in the case of an Investment Proposal) that shall be paid to the Monitor in trust, which Phase I Deposit shall be held and dealt with in accordance with this SISF;
- (j) Employees: If applicable, the proposed number of employees of the Companies who are expected to become employees of the Phase I Bidder if determined to be the Successful Bidder;

- (k) Other: Such other information as may reasonably be requested by the Companies or the Monitor; and
- (l) Phase I Bid Deadline: It is received by the Monitor, at the email address specified in Schedule "B" on or before the Phase I Bid Deadline.

The Companies, with the consent of the Monitor, may waive any one or more minor and non-material violations of the requirements specified for Qualified Phase I Bids and deem such non-compliant Bids to be Qualified Phase I Bids.

12. Evaluation of Qualified Phase I Bids and Designation as Qualified Phase I Bidder

The Companies and the Monitor shall evaluate Qualified Phase I Bids on various grounds including, but not limited to: the Purchase Price or imputed or projected value, the treatment of creditors and related implied recovery for creditors (in each case, as applicable), the assumed liabilities, the number of employees assumed, the certainty of closing the transactions contemplated by the Phase I Bid on or before the Outside Date and any delay or other risks (including closing risks) in connection with the Qualified Phase I Bids.

The Companies, with the consent of the Monitor, shall have the option, in their discretion, to aggregate Portion Bids into an Aggregate Bid.

The Companies shall be under no obligation to accept the highest or best offer or any offer (other than the offer contained in the Stalking Horse Agreement if no Superior Offer is accepted).

As soon as practicable after the Phase I Bid Deadline, the Companies, with the consent of the Monitor, will advise an Interested Party whether or not its Phase I Bid constitutes a Qualified Phase I Bid and that it is a Qualified Phase I Bidder and, if such Phase I Bidder is a Qualified Phase I Bidder, that it is invited to participate in Phase II of the SISP.

Notwithstanding the requirements set forth in Section 11, the Stalking Horse Agreement shall be deemed to be a Qualified Phase I Bid and the Stalking Horse Bidder shall be deemed to be a Qualified Phase I Bidder for all purposes of this SISP.

13. No Qualified Phase I Bids

If no Qualified Phase I Bid other than the Bid pursuant to the Stalking Horse Agreement is received by the Phase I Bid Deadline, the Stalking Horse Bidder shall be declared the Successful Bidder and the Stalking Horse Agreement shall be declared the Successful Bid.

PHASE II – BINDING BIDS

14. Qualified Phase II Bid Requirements

Only Qualified Phase I Bidders shall be entitled to submit a Phase II Bid. In order to be considered a Qualified Phase II Bid, as determined by the Companies and the Monitor: (i) a Phase II Bid must satisfy all of the requirements for a Qualified Phase I Bid contained in

Section 11, provided, however, that the Phase II Bid Deadline shall apply in lieu of the Phase I Bid Deadline, as set forth below, and; (ii) the Qualified Phase I Bidder must also submit the following, in form and substance satisfactory to the Companies and the Monitor, on or before the Phase II Bid Deadline:

- (a) Irrevocable Bid: A cover letter stating that the Phase II Bid is irrevocable until Court approval of the Successful Bid(s), provided that if such Phase II Bidder is selected as the Successful Bidder or the Back-Up Bidder, its Phase II Bid shall remain irrevocable until the Back-Up Bid Expiration Date (as defined below), which includes:
 - (i) Sale Proposal: In the case of a Sale Proposal, a duly authorized and executed definitive purchase agreement, together with all completed schedules thereto substantially in the form of the Form Purchase Agreement, together with a blackline comparing the purchase agreement submitted to the Form Purchase Agreement, which includes all or substantially all of the terms set out in the non-binding letter of intent submitted in Phase I; and
 - (ii) Investment Proposal: In the case of an Investment Proposal, a duly authorized and executed binding term sheet that includes all or substantially all of the terms set out in the non-binding investment proposal submitted in Phase I;
- (b) Unconditional Bid: Evidence that it is not conditioned on: (i) the outcome of unperformed due diligence including the review of any Additional Confidential Information; (ii) obtaining financing; and/or (iii) any other material closing conditions;
- (c) Proof of Financial Ability to Perform: Written evidence upon which the Companies and the Monitor may reasonably conclude that the Phase II Bidder has the necessary financial ability to fully fund and consummate the transaction contemplated by the Phase II Bid and satisfy its obligations under the definitive purchase agreement, including: (i) binding equity/debt commitment letters and/or guarantees (*i.e.*, bank guarantees) covering the full value of all cash consideration; (ii) evidence of the Phase II Bidder's internal resources; and/or (iii) any such other form of financial disclosure or credit-quality support information or enhancement requested by and reasonably acceptable to the Companies and the Monitor demonstrating that the Phase II Bidder has the ability to close the contemplated transaction;
- (d) Acknowledgment: An acknowledgement and representation that the Phase II Bidder: (i) has relied solely upon its own independent review, investigation and/or inspection of any documents regarding the Companies, the Business and/or the Assets to be acquired, or liabilities to be assumed in making its Phase II Bid; (ii) did not rely upon any written or oral statements, representations, promises, warranties conditions or guaranties whatsoever, whether express or implied (by operation of law or otherwise) by the Companies, the Monitor or any of their respective employees, directors, officers, agents, advisors or other representatives, regarding the Companies, the Business, the Assets to be acquired, liabilities to be

assumed, or the completeness of any information provided in connection therewith, except as expressly provided in any definitive transaction documents; and (iii) promptly will commence any governmental or regulatory review of the proposed transaction by the applicable competition, antitrust or other applicable governmental authorities, including those regulating in the cannabis sector;

- (e) Authorization: Evidence, in form and substance reasonably satisfactory to the Companies and the Monitor, of authorization and approval from the Interested Party's board of directors (or comparable governing body) with respect to the submission, execution, delivery and closing of the transaction contemplated by the Phase II Bid, and confirmation that any other required approvals have been obtained;
- (f) Employees: If applicable, full details of the proposed number of employees of the Companies who will become employees of the Phase II Bidder if determined to be the Successful Bidder and the proposed terms and conditions of employment to be offered to those employees;
- (g) Other: Such other information as may reasonably be requested by the Companies or the Monitor; and
- (h) Phase II Bid Deadline: It is received by the Monitor, at the address specified in Schedule "B" hereto (including by email) on or before the Phase II Bid Deadline.

15. Evaluation of Qualified Phase II Bids and Subsequent Actions

The Companies and the Monitor shall evaluate Qualified Phase II Bids on various grounds including, but not limited to: the Purchase Price or imputed or projected value, the treatment of creditors and related implied recovery for creditors (in each case, as applicable), the assumed liabilities, the number of employees assumed, the certainty of closing the transactions contemplated by the Qualified Phase II Bid on or before the Outside Date and any delay or other risks (including closing risks) in connection with the Qualified Phase II Bids.

Notwithstanding the requirements set forth in Section 14, the Stalking Horse Agreement shall be deemed to be a Qualified Phase II Bid and the Stalking Horse Bidder shall be deemed to be a Qualified Phase II Bidder for all purposes of this SISP.

Following such evaluation, the Companies, with the consent of the Monitor, shall:

- (a) identify if any Qualified Phase II Bid is a Superior Offer; and
- (b) if one or more Qualified Phase II Bids are considered to be a Superior Offer, each Qualified Phase II Bidder presenting a Superior Offer shall proceed to an auction (the "**Auction**") with the Stalking Horse Bidder in accordance with the procedures set out in the attached Schedule "C" (the "**Auction Procedure**") to identify the "**Successful Bid**", and the Qualified Phase II Bidder making such Successful Bid will be the "**Successful Bidder**". The determination of any Successful Bid by the

Companies, with the consent of the Monitor, shall be subject to approval by the Court.

The Companies, with the consent of the Monitor, shall have the option to aggregate Portion Bids into an Aggregate Bid. Notwithstanding anything to the contrary herein, the Companies, with the consent of the Monitor, shall be permitted to include Qualified Investment Bids or Qualified Sale Bids in the Auction, including to the extent such Qualified Phase II Bids are Portion Bids, provided that such Qualified Investment Bids or Qualified Sale Bids constitute a Superior Offer.

Following the selection of the Successful Bid, the Companies shall take such steps as may be necessary to finalize definitive transaction documents for the Successful Bid(s) with the Successful Bidder(s) prior to Court approval of the Successful Bid.

The Companies may conditionally accept one or more (if for distinct and compatible transactions that are Portion Bids) Qualified Phase II Bids, which acceptance will be conditional upon the failure of the transaction(s) contemplated by the Successful Bid to close (the “**Back-up Bid**”, and Qualified Phase II Bidder making such Back-up Bid being the “**Back-Up Bidder**”).

For greater certainty, any accepted offer, whether at the Auction or otherwise, must constitute a Superior Offer.

As soon as reasonably practicable and by no later than three days after the Phase II Bid Deadline, the Companies shall advise the Qualified Phase II Bidders if Successful Bid(s) and Back-Up Bid(s) have been accepted, or conditionally accepted, as the case may be. If the Companies and the Monitor determine it is necessary to conduct an Auction pursuant to the SISP Procedures, the Monitor, as soon as reasonably practicable and by no later than March 19, 2024, will advise the Qualified Phase II Bidders of the date, time, location and the rules (if any) of the Auction in accordance with the Auction Procedure.

16. No Qualified Phase II Bids

If no Superior Offer is received by the Phase II Bid Deadline, the Auction will not be held, and the Stalking Horse Bidder will be declared to be the Successful Bidder and the Stalking Horse Agreement shall be declared the Successful Bid.

17. Allocation of Purchase Price

The Companies reserve the right to allocate the Purchase Price of a Successful Bid, acting reasonably and in consultation with the Monitor, at a later date for distribution purposes.

APPROVAL MOTION

18. Approval Motion

The Companies shall use reasonable efforts to bring a motion to the Court to approve the Successful Bid(s) and Back-Up Bid(s) as soon as practicable following the determination by the Companies and the Monitor of the Successful Bidder(s) and the execution of

definitive documents (the “**Sale Approval Hearing**”). The Companies will be deemed to have accepted the Successful Bid(s) only when it has been approved by the Court. All Qualified Phase II Bids (other than the Successful Bid(s) and the Back-Up Bid(s)) shall be deemed rejected by the Companies on and as of the date of approval of the Successful Bid(s) by the Court.

19. Back-Up Bidder

If a Successful Bidder fails to close the transaction contemplated by the Successful Bid(s) on or before the Outside Date for any reason, then the Companies will be deemed to have accepted the Back-Up Bid(s) and will proceed with the transaction pursuant to the terms thereof. The Back-Up Bid(s) shall remain open for acceptance until the closing of the Successful Bid(s), or such other later date as the Companies and the Back-Up Bidder may agree, acting reasonably (the “**Back-Up Bid Expiration Date**”).

MISCELLANEOUS

20. Information From Interested Parties

Each Interested Party shall comply with all reasonable requests for additional information by the Companies or the Monitor regarding such Interested Party and its contemplated transaction. Failure by an Interested Party to comply with requests for additional information will be a basis for the Companies to determine that the Interested Party is not a Qualified Phase I Bidder or a Qualified Phase II Bidder, as applicable.

21. Deposits

All deposits shall be held by the Monitor in a single interest-bearing account designated solely for such purpose. A deposit made by a Successful Bidder shall be dealt with in accordance with the definitive documents for the transactions contemplated by the Successful Bid. Deposits, and any interest earned thereon, paid by Phase I Bidders not selected as either a Qualified Phase I Bidder or a Qualified Phase II Bidder shall be returned to such Phase I Bidder or Phase II Bidder as soon as practicable, and in any event no later than seven (7) Business Days of being advised that it is not a Qualified Phase I Bidder or a Qualified Phase II Bidder, as the case may be. Deposits, and any interest thereon, paid by Qualified Phase II Bidders not selected as either a Successful Bidder or a Back-Up Bidder shall be returned to such Qualified Phase II Bidders as soon as practicable, and in any event no later than seven (7) Business Days following Court approval of the Successful Bid. In the case of Back-Up Bid(s), the deposit and any interest earned thereon shall be retained by the Monitor until the Back-Up Bid Expiration Date and returned to the Back-Up Bidder as soon as practicable, and in any event no later than seven (7) Business Days thereafter or, if a Back-Up Bid becomes a Successful Bid, shall be dealt with in accordance with the definitive documents for the Back-Up Bid.

22. Modifications and Termination

The Companies, with the consent of the Monitor, shall have the right to adopt such other rules for the SISF Procedures (including rules that may depart from those set forth herein)

that will better promote the sale of the Business or all or any part of the Assets or investment in the Companies under this SISP. The Companies, with the consent of the Monitor, shall apply to the Court if it wishes to materially modify or terminate the process set out in this SISP. For certainty, any amendments to the Phase I Bid Deadline or the Phase II Deadline or other dates set out in this SISP, including those relating to the Auction, shall not constitute a material modification, provided that any extensions to the Phase I Bid Deadline or the Phase II Deadline are not longer than seven calendar days.

23. Other

Neither the Companies nor the Monitor shall be liable for any claim for a brokerage commission, finder's fee or like payment in respect of the consummation of any of the transactions contemplated under the SISP arising out of any agreement or arrangement entered into by the parties that submitted the Successful Bid(s) and Back-Up Bid(s). Any such claim shall be the sole liability of the parties that submitted such Successful Bid(s) and Back-Up Bid(s).

Neither the Companies nor the Monitor shall have any liability whatsoever to any person or party, including without limitation, to any Known Potential Bidder, Phase I Bidder, Phase II Bidder, a Successful Bidder or Back-Up Bidder, or any creditor, or other stakeholder, for any act or omission related to this SISP. By submitting a Bid, each Interested Party shall be deemed to have agreed that it has no claim against the Companies or the Monitor for any reason, matter or thing whatsoever related to this SISP.

SCHEDULE “A”

Acknowledgement of the SISP

The undersigned hereby acknowledges receipt of the Sale and Investor Solicitation Process approved by the Order of the Honourable Justice Osborne of the Ontario Superior Court of Justice (Commercial List) dated January 29, 2024 (the “**SISP**”) and that compliance with the terms and provisions of the SISP is required in order to participate in the SISP and for any Bids to be considered by the Companies.

This ____ day of _____, 2024.

[NAME]

By:

[Signing Officer]

SCHEDULE "B"
ADDRESS PARTICULARS

FTI Consulting Canada Inc.

TD South Tower
77 Wellington Street West, Suite 2010
Toronto, ON M5K 1G8

Attention: Jeffrey Rosenberg; Jodi Porepa
Phone: (416) 649-8073; (416) 649-8059
Email: jeffrey.rosenberg@fticonsulting.com; jodi.porepa@fticonsulting.com

With a copy to:

Torys LLP

79 Wellington Street West
30th Floor (Deliveries)
Box 270, TD South Tower
Toronto, ON M5K 1N2

Attention: David Bish; Mike Noel
Phone: (416) 865-7353; (416) 865-7378
Email: dbish@torys.com; mnoel@torys.com

SCHEDULE "C" AUCTION PROCEDURES

Auction

1. If the Companies and the Monitor, decide to conduct an Auction pursuant to the SISP Procedures, the Monitor will notify the Qualified Phase II Bidders (including the Stalking Horse Bidder) who made a Qualified Phase II Bid that the Auction will be held at a location to be determined at 9:00 a.m. (Eastern Time) on a date that is determined by the Companies and the Monitor, provided that it is a date that is not later than March 22, 2024, or such other place, date and time as the Companies or the Monitor may advise. Capitalized terms used but not defined herein have the meaning given to them in the SISP Procedures.

The Auction shall be conducted in accordance with the following procedures:

- (a) Participation at the Auction. Only a Qualified Phase II Bidder is eligible to participate in the Auction. Each Qualified Phase II Bidder must inform the Companies and the Monitor whether it intends to participate in the Auction by no later than 12:00 p.m. (Eastern Time) on the Business Day prior to the Auction. Only the authorized representatives of each of the Qualified Phase II Bidders, the Monitor and the Companies, and their respective counsel and other advisors, and any other parties acceptable to the Companies and the Monitor, shall be permitted to attend the Auction.
- (b) Bidding at the Auction. Bidding at the Auction shall be conducted in rounds. The highest Qualified Phase II Bid at the beginning of the Auction shall constitute the "**Opening Bid**" for the first round and the highest Overbid (as defined below) at the end of each round shall constitute the "**Opening Bid**" for each following round. In each round, a Qualified Phase II Bidder may submit no more than one Overbid. Only a Qualified Phase II Bidder who bids in a round (including the Qualified Phase II Bidder that submitted the Opening Bid for such round) shall be entitled to participate in the next round of bidding at the Auction. For greater certainty, an Aggregate Bid may be determined to be the Opening Bid for any round including the opening round.
- (c) Monitor Shall Conduct the Auction. The Monitor and its advisors shall direct and preside over the Auction. At the start of the Auction, the Monitor shall provide the terms of the Opening Bid to all participating Qualified Phase II Bidders at the Auction. The determination by the Monitor, in consultation with the Companies, of which Qualified Phase II Bid constitutes the Opening Bid for each round shall take into account any factors that the Monitor reasonably deems relevant to the value of the Qualified Phase II Bid, including, among other things, the following: (i) the amount and nature of the consideration, including the value of any non-cash consideration; (ii) the proposed assumption of any liabilities and the related implied impact on recoveries for creditors; (iii) the number of employees assumed by the Qualified Phase II Bidder; (iv) the Monitor's reasonable assessment of the certainty of the Qualified Phase II Bidder to close the proposed transaction on or before the Outside Date; (v) the likelihood, extent and impact of any potential delays in

closing; (vi) the impact of the contemplated transaction on any actual or potential litigation; (vii) the net economic effect of any changes from the Opening Bid of the previous round; (viii) the net after-tax consideration to be received by the Companies; and (ix) such other considerations as the Monitor deems relevant in its reasonable business judgment (collectively, the “**Bid Assessment Criteria**”). For greater certainty, the Monitor may ascribe monetary values to non-monetary terms in Overbids for the purposes of assessing and valuing such Overbids, including without limitation, the value to be ascribed to any liabilities or contracts to be assumed. All Bids made after the Opening Bid shall be Overbids, and shall be made and received on an open basis, and all material terms of the highest and best Overbid shall be fully disclosed to all other Qualified Phase II Bidders that are participating in the Auction. The Monitor shall maintain a record of the Opening Bid and all Overbids made and announced at the Auction, including the Successful Bid and the Back-Up Bid.

- (d) Terms of Overbids. An “**Overbid**” is any Bid made at the Auction subsequent to the Monitor’s announcement of the Opening Bid. To submit an Overbid, in any round of the Auction, a Qualified Phase II Bidder must comply with the following conditions:
- (i) *Minimum Overbid Increment:* Any Overbid shall be made in CAD\$50,000 increments (the “**Minimum Overbid Increment**”). The amount of the cash purchase price consideration or value of any Overbid shall not be less than the cash purchase price consideration or value of the Opening Bid, plus the Minimum Overbid Increment(s) at that time plus any additional Minimum Overbid Increments. In respect of the Stalking Horse Agreement and any Overbid by the Stalking Horse Bidder, the value shall include the amount of any indebtedness owing to it that is to be deemed repaid or otherwise released and any priority indebtedness to be assumed pursuant to and in accordance with the terms of the Stalking Horse Agreement.
 - (ii) *The Bid Requirements same as for Qualified Phase II Bids:* Except as modified herein, an Overbid must comply with the bid requirements contained herein, provided, however, that the Phase II Bid Deadline shall not apply. Any Overbid made by a Qualified Phase II Bidder must provide that it remains irrevocable and binding on the Qualified Phase II Bidder and open for acceptance until the closing of the Successful Bid(s).
 - (iii) *Announcing Overbids:* At the end of each round of bidding, the Monitor shall announce the identity of the Qualified Phase II Bidder and the material terms of the then highest and/or best Overbid, including the nature of the proposed transaction contemplated by the best Overbid, the assets proposed to be acquired and the obligations proposed to be assumed, the basis for calculating the total consideration offered in such Overbid, and the resulting benefit to the Companies based on, among other things, the Bid Assessment Criteria. For greater certainty, an Aggregate Bid may be determined to be the highest and/or best Overbid.

- (iv) *Consideration of Overbids:* The Monitor reserves the right, in consultation with the Companies, to make one or more adjournments in the Auction to, among other things: (A) facilitate discussions between the Companies and individual Qualified Phase II Bidders; (B) allow individual Qualified Phase II Bidders to consider how they wish to proceed; (C) consider and determine the current highest and/or best Overbid at any given time during the Auction; and (D) give Qualified Phase II Bidders the opportunity to provide the Monitor with such additional evidence as it, or the Companies, may require, that the Qualified Phase II Bidder has obtained all required internal corporate approvals, has sufficient internal resources, or has received sufficient non-contingent debt and/or equity funding commitments, to consummate the proposed transaction at the prevailing Overbid amount. The Monitor and Companies may have clarifying discussions with a Qualified Phase II Bidder, and the Monitor may allow a Qualified Phase II Bidder to make technical clarifying changes to its Overbid following such discussions.
- (v) *Portion Bids:* Notwithstanding the forgoing, each Portion Bidder entitled to participate in the Auction shall be entitled to submit an Overbid with respect to the Assets on which it is bidding without being required to submit an Overbid with respect to all Assets or the applicable Opening Bid; provided that any Aggregate Bid that is an Overbid shall be subject to these Auction Procedures as any other Overbid, including that such Aggregate Bid that is an Overbid shall be subject to the Minimum Overbid Increment. Portion Bids can be aggregated with any other Qualified Phase II Bid, as determined by the Companies and the Monitor.
- (vi) *Failure to Bid:* If at the end of any round of bidding a Qualified Phase II Bidder (other than a Portion Bidder, or the Qualified Phase II Bidder that submitted the then highest and/or best Overbid or Opening Bid, as applicable) fails to submit an Overbid, then such Qualified Phase II Bidder shall not be entitled to continue to participate in the next round of the Auction.
- (e) Discussion with other Bidders. A Qualified Phase II Bidder shall not strategize or have discussions with other Qualified Phase II Bidders for the purpose of submitting an Overbid without the consent of the Monitor.
- (f) Additional Procedures. The Monitor may, in consultation with the Companies, adopt rules for the Auction at or prior to the Auction that will better promote the goals of the Auction, including rules pertaining to the structure of the Auction and the order of bidding, provided they are not inconsistent with any of the provisions of the SISP Procedures and provided further that no such rules may change the requirement that all material terms of the then highest and/or best Overbid at the end of each round of bidding will be fully disclosed to all other Qualified Phase II Bidders.

- (g) Closing the Auction. The Auction shall be closed after the Monitor, with the assistance of the Companies and their respective legal counsel, has (i) reviewed the final Overbid of each Qualified Phase II Bidder on the basis of financial and contractual terms and the factors relevant to the sale process, including those factors affecting the speed and certainty of consummating the proposed sale, and (ii) identified the Successful Bid and the Back-Up Bid and advised the Qualified Phase II Bidders participating in the Auction of such determination. One or more Portion Bids can, in the discretion of the Monitor, form part of a Successful Bid and Back-Up Bid so long as such Portion Bids do not overlap in respect of the Assets sought to be purchased and in such case, such Portion Bid(s) shall be included in the definition of Successful Bidder or Back-Up Bid, as applicable.
- (h) Finalizing Documentation. Promptly following a Bid of a Qualified Phase II Bidder being declared the Successful Bid or the Back-Up Bid, the applicable Qualified Phase II Bidder shall execute and deliver such revised and updated definitive transaction agreements as may be required to reflect and evidence the Successful Bid or Back-Up Bid.
- (i) Qualified Investment Bids. Notwithstanding any other provision of this SISP, if a Qualified Phase II Bidder submits a Qualified Investment Bid that the Companies or the Monitor consider would result in a greater value being received for the benefit of the Companies' creditors than the Qualified Sale Bids, then the Monitor may allow such Qualified Phase II Bidder to participate in the Auction, notwithstanding that such Qualified Investment Bid may not otherwise comply with the terms of these Auction Procedures. In such case, the Monitor may adopt appropriate rules to facilitate such Qualified Phase II Bidder's participation in the Auction.

Appendix D

Break Fee Chart for Stalking Horse Comparison Period

Comparison of CCAA Stalking Horse Total Fees for the period January 2019 to December 2023^{1,2}

	Debtor	Purchaser	Filing Date	Estimated Transaction Value ("TV")	Total Fees	Total Fees as % of TV	Industry	Credit Bid
1	Just Energy Group	The DIP lenders and one of their affiliates	09-Mar-21	\$ 569,448,880	19,077,058	3.4%	Oil & Gas	Y
2	NextPoint Financial Inc. et al.	Certain lenders to NextPoint	25-Jul-23	\$ 175,000,000	700,000	0.4%	Financial Services	N
3	Dominion Diamond Mines	Washington Diamond Investments Holdings II, LLC	22-Apr-20	\$ 169,163,150	6,401,638	3.8%	Mining	N
4	DCL Corporation	Pigments Holdings, Inc.	20-Dec-22	\$ 166,200,000	-	NA	Distribution	N
5	BlackRock Metals Inc. et al.	OMF Fund II H Ltd. and Investissement Québec	23-Dec-21	\$ 90,759,000	2,500,000	2.8%	Mining	Y
6	Urthecast Corp. (TSX:UR)	Antarctica Infrastructure Partners, LLC, an affiliate of Antarctica Capital LLC	04-Sep-20	\$ 69,000,000	3,070,000	4.4%	Technology	N
7	Validus Power Corp. et al.	Macquarie Equipment Finance Limited and Far North Power Corp.	29-Aug-23	\$ 59,000,000	2,260,000	3.8%	Professional Services	N
8	Vari-Form Inc.	11032569 Canada Inc.	08-Jan-19	\$ 50,000,000	1,500,000	3.0%	Automotive	N
9	Fire & Flower Inc. et al.	2707031 Ontario Inc. (the DIP lender)	05-Jun-23	\$ 36,000,000	750,000	2.1%	Cannabis	Y
10	Aleafia Health Inc. et al.	RWB (PV) Canada Inc.	25-Jul-23	\$ 25,000,000	500,000	2.0%	Cannabis	N
11	Divestco Inc.	2179602 Alberta Ltd.	04-Mar-19	\$ 15,410,517	425,000	2.8%	Oil & Gas	N
12	James E. Wagner Cultivation Corporation	Trichome Financial Corp.	01-Apr-20	\$ 11,700,000	100,000	0.9%	Cannabis	N
13	Edward Collins Contracting Ltd.	92712 Newfoundland & Labrador Inc.	05-Oct-23	\$ 7,240,000	174,800	2.4%	Construction	N
14	Trichome Financial Corp.	L5 Capital Inc.	07-Nov-22	\$ 5,000,000	200,000	4.0%	Cannabis	N
15	Bow River Energy Ltd.	2270943 Alberta Ltd.	01-Jun-20	\$ 4,290,221	175,000	4.1%	Oil & Gas	N
16	The Flowr Corporation et al.	1000343100 Ontario Inc.	20-Oct-22	\$ 3,888,889	185,000	4.8%	Cannabis	N
17	Cannapiece Group Inc. et al.	Cardinal Advisory Limited	03-Nov-22	\$ 3,500,000	200,000	5.7%	Cannabis	N
18	Strategic Oil & Gas Ltd.	GMT Exploration Zama Inc.	10-Apr-19	\$ 1,500,000	75,000	5.0%	Oil & Gas	N
19	Zenabis Group	2657408 Ontario Inc.	17-Jun-22	NA	750,000	NA	Cannabis	N
20	Freshlocal Solutions Inc.	Third Eye Capital Corporation	16-May-22	NA	Sealed	2.5%	Retail	N

1. Chart above includes all stalking horse transactions between January 2019 and December 2023. Summary in the Monitor's Report focuses on transaction lower than \$10 million

2. Transaction Value is the stalking horse bid value

3. Total Fees include Break Fees and Expense Reimbursements

Source: Insolvency Insider and Government of Canada Public CCAA Records

Appendix E

DIP Fee Comparison Table for DIP Comparison Period

Overview of DIP Facilities Granted in Canada During the DIP Comparison Period¹

Debtor	DIP Lender	Filing Date	Jurisdiction	Industry	DIP Loan (C\$MM)	DIP Interest	DIP Fee as a % of DIP Loan
1 Candesto Enterprises Corp. et al.	Durisol Ltd.	20-Dec-23	AB	Professional Services	\$ 1.30	8.5%	0.0%
2 Harbour Grace Ocean Enterprises Ltd. and Laureceton Holdings Ltd.	Gray Enterprise Ltd.	2-Nov-23	NL	Construction	\$ 1.00	13.0%	1.5%
3 Aereus Technologies Inc.	1000608245 Ontario Inc.	31-Jul-23	ON	Manufacturing	\$ 0.78	15.0%	2.1%
4 Joseph Richard Hospitality Group Ltd. et al.	Canadian Western Bank	17-Jul-23	BC	Food & Accommodation	\$ 0.50	12.2%	0.0%
5 OGEN Ltd. and OGEN Holdings Ltd.	Hawksworth Holdings Ltd. and G. Edwards Holdings Ltd.	26-Jun-23	AB	Cannabis	\$ 0.50	15.0%	0.0%
6 Dynaleo Inc. and Dynaleo Group Services Inc.	Travelers Capital Corp.	23-May-23	AB	Cannabis	\$ 0.15	12.3%	4.3%
7 Swarmio Inc. et al.	Triaccess Ltd.	21-Jun-23	ON	Technology	\$ 1.50	12.0%	1.9%
8 Ébénisterie St-Urbain Ltee et Woodlore International Inc.	9414-0050 Québec inc.	12-May-23	QC	Manufacturing	\$ 0.70	5.0%	0.0%
9 Plant-Based Investment Corp.	1000492681 Ontario Inc.	1-May-23	ON	Financial Services	\$ 0.50	12.0%	2.0%
10 FlexiTy Solutions Inc. and FlexiTy Holdings Inc.	BHG-BC Holdings Ltd.	27-Mar-23	ON	Technology	\$ 1.10	14.7%	2.5%
11 Donmar Properties Ltd. and 10058984 Manitoba Ltd.	Morcourt Properties Ltd.	18-Apr-23	MB	Real Estate	\$ 0.76	8.0%	0.0%
12 B.S.K. Group Inc.	4300769 Canada Inc.	3-Mar-23	QC	Retail	\$ 0.60	0.0%	0.0%
13 Polar Window of Canada Ltd. et al.	TD Bank	10-Feb-23	MB	Distribution	\$ 1.20	0.0%	2.9%
14 Tehama Inc.	14667913 Canada Inc.	20-Jan-23	ON	Technology	\$ 0.50	5.0%	0.0%
15 Groupe Vertendre	Immofinn SEC	20-Jan-23	QC	Real Estate	\$ 0.25	0.0%	0.0%
16 Payslate Inc.	Ayrshire Real Estate Management Inc.	5-Dec-22	BC	Technology	\$ 1.20	15.0%	0.0%
17 Digitcom Telecommunications Inc.	TD Bank	31-Oct-22	AB	Technology	\$ 0.45	11.0%	5.6%
18 Springer Aerospace Holdings Limited and 1138969 Ontario Inc.	Hillmount Capital Inc.	23-Nov-22	ON	Professional Services	\$ 1.50	13.0%	4.0%
19 Cannapiece Group Inc. et al.	Cardinal Advisory Limited	3-Nov-22	ON	Cannabis	\$ 0.50	12.0%	2.0%
20 The Flowr Corporation et al.	1000343100 Ontario Inc.	20-Oct-22	ON	Cannabis	\$ 2.00	18.0%	2.0%
21 BR Capital	2443970 Alberta Inc.	15-Sep-22	AB	Technology	\$ 0.43	9.0%	0.0%
22 ISS Communications Inc.	Phoenix Contact Venture Funds	5-Aug-22	ON	Technology	\$ 1.42	14.0%	2.0%
23 SugarBud Craft Growers Crop. et al.	Connect First Credit Union Ltd.	26-Sep-22	AB	Cannabis	\$ 2.00	12.0%	2.0%
24 Superette Inc. et al.	SNDL Inc.	30-Aug-22	ON	Cannabis	\$ 1.37	15.0%	0.0%
25 iSPAN Systems Ltd.	Paradigm Focus Product Development Inc., Walters Partners Inc., and Leder Investments Ltd.	11-Aug-22	ON	Manufacturing	\$ 1.50	3.0%	0.0%
26 Speakeasy Cannabis Club Ltd.	Travelers Capital Corp.	27-Jul-22	BC	Cannabis	\$ 1.00	12.0%	11.8%
27 North American Lamb Company et al.	BNS and/or FCC	5-Aug-22	AB	Agriculture	\$ 1.80	0.0%	0.0%
28 ISS Communications Inc.	Phoenix Contact Venture Funds I GmbH	5-Aug-22	ON	Technology	\$ 1.42	14.0%	2.0%
29 Petrolama Energy Inc.	884304 Alberta Ltd.	27-Jul-22	SK	Oil and Gas	\$ 0.30	5.0%	0.0%
30 The Sanderson-Harold Company c.o.b. as Paris Kitchens	BMO	31-May-22	ON	Manufacturing	\$ 0.45	5.2%	0.0%
31 Medipure Pharmaceuticals Inc.	HFS Management Inc.	11-May-22	BC	Healthcare	\$ 1.36	6.0%	0.0%
32 Sproutly, Inc. and Toronto Herbal Remedies Inc.	0982244 B.C. Ltd. o/a Isle of Mann Property Group	24-Jun-22	ON	Cannabis	\$ 0.75	14.0%	2.0%
33 Canadian Dehua International Mines Group Inc.	Qubo Liu (a 50% shareholder)	3-Jun-22	BC	Mining	\$ 0.35	0.0%	0.0%
34 Mjardin Group Inc., Growforce Holdings Inc., 8586985 Canada Corporation and Highgrade MMJ Corporation	Bridging Finance	2-Jun-22	ON	Cannabis	\$ 2.00	10.0%	2.5%
35 Choom Holdings Inc.	1) Aurora Cannabis Inc. 2) Secured creditor other than Aurora	22-Apr-22	BC	Cannabis	\$ 0.82	12.2%	0.0%
36 0989705 B.C. Ltd. et al.	Gatland, REV and South Street LP	1-Apr-22	BC	Real Estate	\$ 1.00	10.0%	2.5%
37 Trinity Ravine Community Inc.	Nahid Corporation or an affiliate	23-Feb-22	ON	Real Estate	\$ 0.85	12.0%	7.1%
38 BC Craft Supply Co. Ltd.	Avro Capital Corp.	24-Jan-22	BC	Cannabis	\$ 0.42	11.5%	1.2%

1. Chart above includes all DIP Facilities granted in Canada between January 2022 and December 2023. Summary in the Monitor's Report focuses on DIP Facilities less than \$2 million

Source: Insolvency Insider and Government of Canada Public CCAA Records

Appendix F

Revised and Extended Cash Flow Projections

Trees Corporation
Consolidated Cash Flow Forecast
\$CDN 000's

		1	2	3	4	5	6	7	8	9	10	11	12	13	
	Week Ending [1]	19/Jan/24	26/Jan/24	2/Feb/24	9/Feb/24	16/Feb/24	23/Feb/24	1/Mar/24	8/Mar/24	15/Mar/24	22/Mar/24	29/Mar/24	5/Apr/24	12/Apr/24	Total
Receipts															
Retail Sales and Other Receipts	[2]	\$ 349	\$ 302	\$ 344	\$ 302	\$ 302	\$ 302	\$ 344	\$ 302	\$ 302	\$ 302	\$ 302	\$ 344	\$ 302	\$ 4,095
Total Receipts		349	302	344	302	302	302	344	302	302	302	302	344	302	4,095
Disbursements															
Cannabis and Accessory Inventory Purchases	[3]	194	194	194	194	194	194	194	194	194	194	194	194	194	2,525
Payroll Costs-Includes Benefits	[4]	65	61	72	50	79	56	74	53	77	56	72	51	61	826
Rent	[5]	-	-	89	-	-	-	89	-	-	-	-	89	-	267
Operational G&A and Taxes	[6]	20	52	195	2	-	18	75	15	-	18	7	79	-	481
Restructuring Costs	[7]	85	486	77	77	77	90	77	90	90	90	79	79	79	1,477
Total Disbursements		364	794	627	323	350	359	510	353	362	359	352	492	334	5,577
Net Cash Flow		\$ (15)	\$ (492)	\$ (283)	\$ (21)	\$ (48)	\$ (57)	\$ (165)	\$ (51)	\$ (61)	\$ (57)	\$ (51)	\$ (147)	\$ (33)	\$ (1,481)
Cash on Hand															
Opening Balance	[8]	\$ 57	\$ 42	\$ 350	\$ 67	\$ 46	\$ 198	\$ 141	\$ 175	\$ 124	\$ 64	\$ 207	\$ 156	\$ 168	\$ 57
DIP Facility Draw/(Repayment)	[9]	-	800	-	-	200	-	200	-	-	200	-	160	-	1,560
Net Cash Flow		(15)	(492)	(283)	(21)	(48)	(57)	(165)	(51)	(61)	(57)	(51)	(147)	(33)	(1,481)
Ending Cash Balance		\$ 42	\$ 350	\$ 67	\$ 46	\$ 198	\$ 141	\$ 175	\$ 124	\$ 64	\$ 207	\$ 156	\$ 168	\$ 136	\$ 136
Proposed Debt-in-Process Financing															
Opening Balance		\$ 60	\$ 60	\$ 860	\$ 905	\$ 905	\$ 1,106	\$ 1,106	\$ 1,307	\$ 1,308	\$ 1,310	\$ 1,511	\$ 1,513	\$ 1,675	\$ 60
Draw/(Repayment)		-	800	-	-	200	-	200	-	-	200	-	160	-	1,560
Commitment Fee		-	-	45	-	-	-	-	-	-	-	-	-	-	45
Accrued Interest		-	-	-	-	1	1	1	1	1	2	2	2	2	13
Ending Balance		\$ 60	\$ 860	\$ 905	\$ 905	\$ 1,106	\$ 1,106	\$ 1,307	\$ 1,308	\$ 1,310	\$ 1,511	\$ 1,513	\$ 1,675	\$ 1,678	\$ 1,678

Notes to the Consolidated Cash Flow Forecast

[1] The purpose of the Cash Flow Forecast is to estimate the liquidity requirements of Trees Corporation, Ontario Cannabis Holdings Corp., Miraculo Inc., 2707461 Ontario Ltd., OCH Ontario Consulting Corp., and 11819496 Canada Inc. ("Trees", or the "Company") during the forecast period. The forecast above is presented in Canadian Dollars. The 13-week Cash Flow Forecast is on a cash-basis only.

[2] Retail Sales and Other Receipts includes revenues generated by the retail stores and from sales data sold.

[3] Cannabis and Accessory Inventory Purchases represents disbursements related to weekly inventory purchases from the provincial distributors in British Columbia and Ontario, as well as cannabis accessory purchases from vendors.

[4] Payroll Costs are funded on a gross basis through a third-party service.

[5] Rent represents the monthly lease obligations for leased retail stores.

[6] Operational G&A and Taxes includes expenses such as utilities, security, software, cash management services, insurance for the store locations, sales taxes, and other general administrative costs.

[7] Restructuring Costs include professional fee payments and expenses of the Applicants' legal counsel, monitor and its counsel in connection with the restructuring proceedings. Professional fees incurred by TGF, Torys, and EY (as former Monitor) to date are forecasted to be paid in the week ending January 26, 2024, pending Court approval.

[8] Beginning Balance represents the opening cash balance as of January 13, 2024.

[9] DIP Facility Draw/Repayment represents the projected draws and repayments under the DIP facility, subject to Court approval.

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, c. C-36, AS AMENDED
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF TREES
CORPORATION, ONTARIO CANNABIS HOLDINGS CORP., MIRACULO INC., 2707461
ONTARIO LTD., OCH ONTARIO CONSULTING CORP., AND 11819496 CANADA INC.

Court File No. CV-23-00711935-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
Proceeding commenced at TORONTO

FIRST REPORT OF
FTI CONSULTING CANADA INC.,
AS MONITOR

TORYS LLP
79 Wellington St. W., 30th Floor
Box 270, TD South Tower
Toronto, ON M5K 1N2

David Bish (LSO #: 41629A)
Tel: 416.865.7353
Email: dbish@torys.com

Mike Noel (LSO#: 80130F)
Tel: 416.865.7378
Email: mnoel@torys.com

Lawyers for FTI Consulting Canada Inc.,
the Monitor